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IDEAS ON LIBERTY

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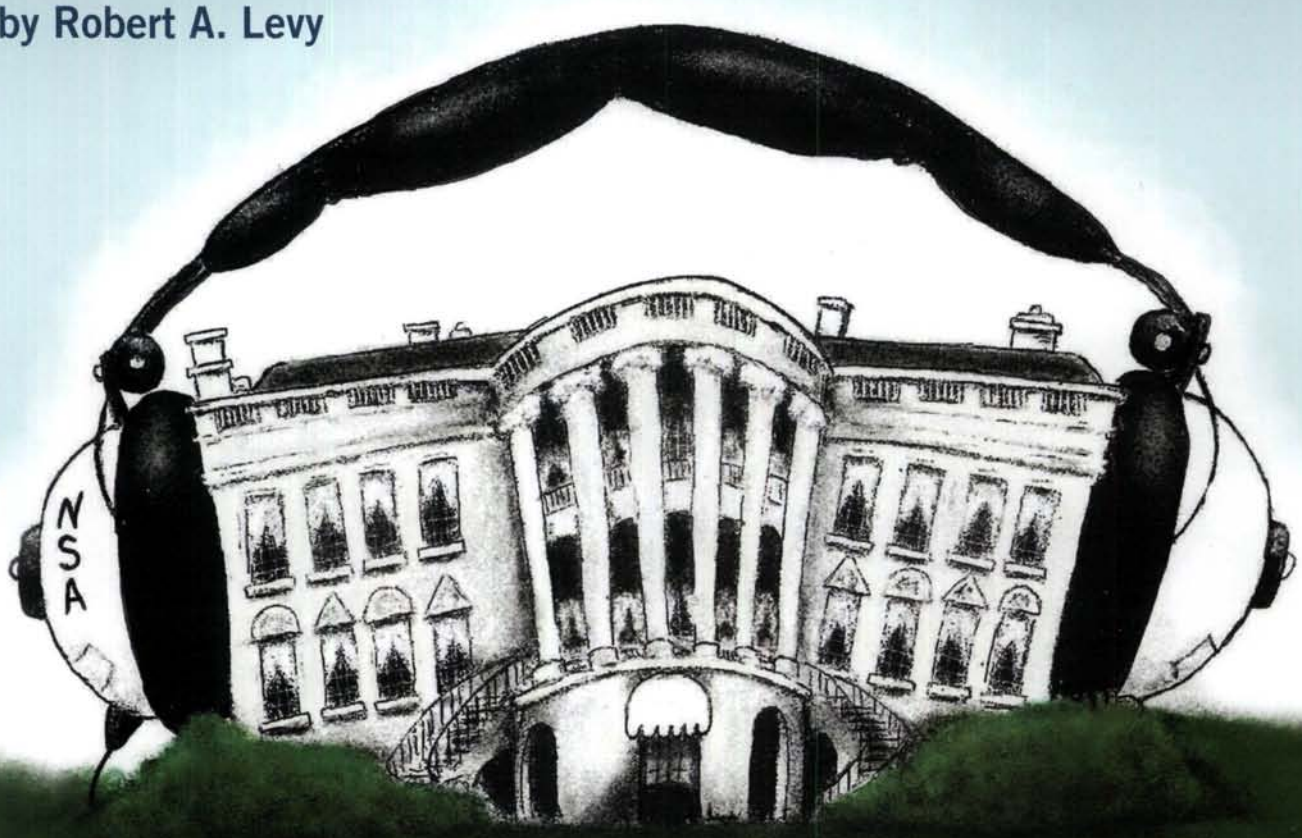

Democracy Versus Liberty

by James Bovard

The Anatomy of Economic Advice

by Israel M. Kirzner

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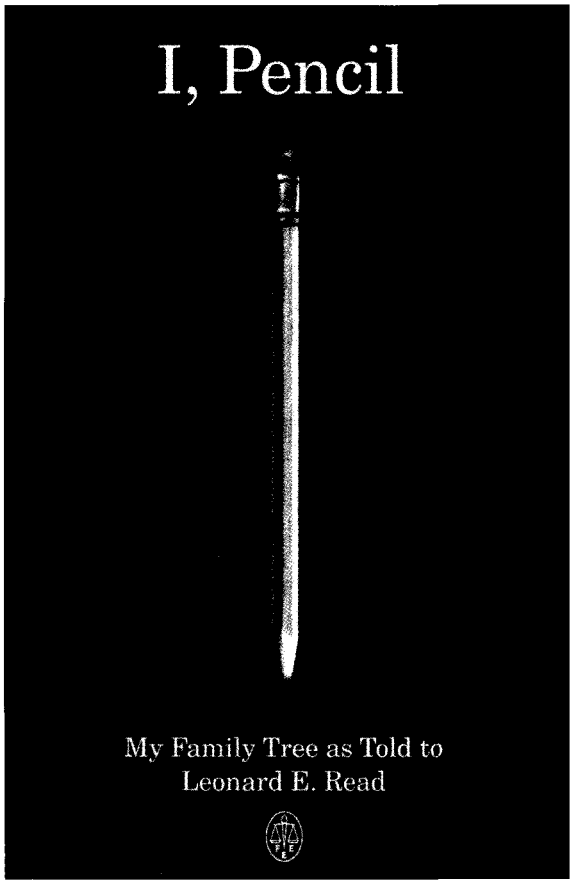

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THE FREEMAN
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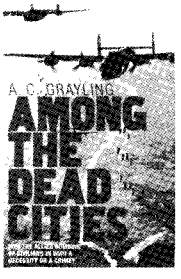

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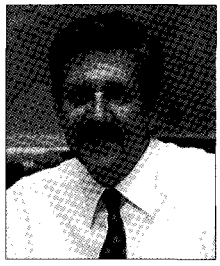
Not Losing Sight of the Best in the Pursuit of Liberty



BY RICHARD M. EBELING

The eighteenth-century French Enlightenment philosopher Voltaire warned that "the best is the enemy of the good." He meant that in trying to pursue unattainable perfection, we may miss the opportunity to create something better than what we have. There is much wisdom in these words. But there is danger in its opposite: If we allow ourselves to be satisfied with what merely seems like something better (or less bad), we may lose sight of the ideal and miss any chance to attain it. This seems to be the problem with some who have lost hope in the cause of liberty in America.

For example, conservative political analyst David Frum, free-market columnist Bruce Bartlett, and magazine writers Ross Douthat and Reihan Salam recently contributed to a symposium on "The GOP and Limited Government: Do They Have a Future Together?" on the Cato Institute website. Their common conclusion was that there is no chance for greater freedom in America for the foreseeable future, especially economic liberty. Therefore, we should be satisfied with advocating policies that would limit the damage from further government growth rather than wasting time trying to achieve the free society.

Frum argues that the best chance for a limited-government agenda passed in the 1990s, when the conservatives in Congress failed to push through their "Contract with America." "The state is growing again," Frum despairs, "and it is pre-programmed to carry on growing. Health spending will rise, pension spending will rise, and taxes will rise." He says that "It may be that the future of conservatism is to recognize that it belongs to the past." At best American conservatism may "live on as a tendency within both [political] parties," but having no power over either one.

Bartlett believes "the Republican Party has become deeply corrupt and appears to lack any leaders with the potential for pushing it back in a more conservative direction." Furthermore, there are so many people now receiving funding at the political trough, "it is unrealistic to think that spending for them can be reduced except marginally." He thinks that the dream of limited government should be forgotten. Big government cannot and will not be reduced. Instead, "conservatives and libertarians need to think seriously about how best to finance the government spending that is in the pipeline." Given that "the extreme difficulty of making even minuscule changes in the growth path of federal spending," libertarians should organize themselves into an "interest group along the lines of the National Rifle Association" and lobby for ways to limit the fiscal and regulatory damage of an inescapably bigger and bigger government. Bartlett favors a national value-added tax to fund the coming fiscal madness.

Douthat and Salam concur that conservatives "need to accept that government will remain large in the short-run—for reasons of entitlement spending alone, while pursuing long-range strategies that will produce a more opportunity-friendly, less statist America." What do they propose for the longer run? Tax credits for families with children, including bonuses for having more babies, mandated portable health insurance, and lower costs for school. They admit that "not all of these ideas involve less government, *per se*—but the small-government movement has always been less about the absolute size of the federal budget and more about the way government spending shapes society, for good or (more often) for ill."

These gentlemen have decided that the future belongs to the interventionist welfare state. Friends of freedom, whether they consider themselves conservatives or libertarians, must accept this fact for years to come. Their role in America, therefore, will be rearguard skirmishes and policy-influencing damage control as they watch an ever-expanding government.

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I would like to suggest that this attitude will only make the achievement of freedom more difficult. What happens in the political arena today or tomorrow will not determine if freedom is restored in the future.

A former FEE staff member once observed that while politicians say they lead political trends, they in fact follow them. They wet their finger, raise it in the air to see which way the political wind is blowing, and then run in front of the parade and say, "Follow me."

The case for liberty will be won outside of politics and the current political trends. It will be won through a change in the climate of ideas. And it will be won precisely by arguing the principled case for freedom, regardless of the apparent opposing trends of the time.

The burden we face is precisely the continuing predominance of collectivist and statist ideas in America and around the world. We see it in the notion that government must plan for our retirement, care for us when we get ill, see to the education of our children, regulate our activities in the marketplace, and paternalistically surveil what we eat, smoke, read, or watch. And how can we hope to roll back the state when too many friends of freedom participate in public-policy debates in which neither they nor anyone else challenges the rationale for such government intervention?

Back in the 1930s Albert Jay Nock wrote an essay titled "Isaiah's Job." Called by God to preach righteousness to the Israelites, Isaiah became despondent when it seemed that no one was listening and turning away from his or her sinful ways. Isaiah asked God why he had been sent on such an impossible task, and wanted to be relieved of this thankless and seemingly futile effort. God replied that just because he did not know whose heart and mind he was touching did not mean it was without effect. God knew who was touched by Isaiah's message, and that was all that was necessary.

Nock's point was that we must look beyond what may appear to be the successes and failures of the present in making the case for liberty. Indeed, we must not even worry about whether or not we are winning. Constantly looking over our shoulders to see if anyone is following too often results in our changing the message to fit what we think others will find palatable. That means our message can't be much different from what already appeals to many people—in other words, just another variation on the statist themes of our time.

Lost Confidence

To persuasively preach an end to dependency on government can surely seem as impossible as Isaiah's job. The authors quoted have lost confidence in the triumph of freedom. And by surrendering in this way, they make it that much easier for the current statist trend to continue.

Our authors have concluded that just as men seem unable to resist the temptation of sin, so they are too weak to kick the habit of government dependency. But just as men can and have come to salvation, so they can also decide that freedom and self-responsibility are worth reclaiming as well.

In addition to this, the fiscal burdens of the welfare state are threatening to become so great in the coming decades that our society will face a series of unavoidable political crossroads. How severe the crises will be and how the damage will be minimized will depend on the moral and social philosophies that are competing for acceptance.

When such crises arise and political choices are made, it will be crucial that the classical-liberal, free-market vision is present as a viable alternative. This will not happen unless that vision has been presented in a consistent and principled way and in stark contrast to its collectivist competitors. Precisely so the ideal of freedom will be understood and taken seriously when that time comes, its advocates must have the courage of their convictions in defending it today.

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Perspective

Cleaning Up After the Elephants

I detect a pattern in the challenges hurled at liberals on nearly every issue. The opponent of liberalism describes a problem, invariably with roots in a government infringement of freedom. In response, he prescribes more government interference with freedom, at which point the liberal interjects that the best and only just solution is the repeal of the culpable state power. The statist replies that this will not do because the liberal's proposal won't solve every related problem and may even reveal hitherto overlooked problems. Undo still more government action, the liberal replies. But this brings the same criticism.

Here's what's going on. The exercise of state power for many years has created gross distortions in incentives, consumer preferences, and investment, leading to the problems under discussion. In other words, the politicians and bureaucrats have made a royal mess. Then liberals are faulted for not being able to clean it up tidily with the wave of a hand. That they can't make everything right at once is held against liberalism.

An example of this is medical insurance. Government has regulated and heavily financed every aspect of medicine and insurance for years. As a result, demand and hence prices have gone up past the point they would have gone in a free market, pricing some people out of the fettered market. When a liberal advocates removing the tangled web of regulations, taxes, and subsidies, and letting the free and competitive market operate, the statist objects that this idea won't immediately enable everyone to have "affordable" health insurance and medical care. The same argument is made about Social Security. Translation: "My side bollixed things up terribly, but since your side can't resolve everything smoothly and painlessly by tomorrow, my side should continue calling the shots."

This, I submit, falls short in the logic department. If the present statist course is headed toward continued and increasing disaster, then we need a new course. That the freedom approach can't make everything new overnight, or even in the next few years, is hardly an argument against it. The fact is, what we're doing now is causing

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misery, insecurity, and advancing serfdom. To add insult to injury, that very misery and insecurity are made to justify more measures that will only add to the misery and insecurity, not to mention the serfdom. One of two things will happen: either we'll end up with complete central planning (the abolition of freedom) in which everything not prohibited is required, or we'll settle into a wretched, stagnant social equilibrium short of totalitarianism and muddle along indefinitely. Desiderata these are not.

The only hopeful alternative is freedom, the progressive removal of the many levels of state interference with our peaceful productive activities. The state's coercion has created untold dislocations, including some as yet undetected. Thus as power is peeled away, problems will be revealed that were not apparent before. It is not liberalization that will have created those problems. On the contrary, persistent liberalization will solve them.

If you want an idea of what to expect, read Henry Hazlitt's novel, *Time Will Run Back*. In Hazlitt's story, a pragmatic man acquires the top job in a worldwide totalitarian state. Seeing that people are inconvenienced by the rationing system, he proposes what looks like a minor adjustment. He had no intention of making any big changes, but, in a reverse of Mises's "critique of interventionism," the little change "creates" new problems that the commissar sees can only be solved by further liberal tweaking. The logical destination is laissez faire.

That is the route we hope to begin traveling as liberal ideas become more prominent in our culture. While we should advocate abolition of all intervention, abolition all at once is unlikely to happen. (Although we can hope, can't we?) But while gradual liberalization is likely, it doesn't follow that we should *advocate* gradualism. As the great slavery abolitionist William Lloyd Garrison understood, "Gradualism in theory is perpetuity in practice."

★ ★ ★

The United States never had wholesale government ownership of the means of production, but that doesn't mean there's no central economic planning. Just look at what goes on in the name of development at the municipal and regional levels. Steven Greenhut reports.

Even in a mixed economy business success is not guaranteed. John Semmens looks at the fluidity of the Fortune 500.

A popular fallacy today equates democracy with liberty. But as James Bovard shows, the two couldn't be further apart.

There's danger in picking out one part of society as the most important, as Victor Jacobson explains in this month's FEE Timely Classic.

Can economists give public-policy advice without compromising economics as a value-free discipline? Israel Kirzner begins an exploration of this question in the first of a three-part series.

President Bush claims the authority to eavesdrop, without warrants, on telephone calls between suspected terrorists in foreign countries and U.S. residents. Is that claim valid? Robert Levy takes up this critical matter.

In the columns department, here's what we find: Richard Ebeling explains why political trends are misleading. Lawrence Reed takes a swing at governments that run golf courses. Thomas Szasz explains social control through psychiatric diagnosis as an imposition and assumption of roles. Burton Folsom shows the connection between war and debt. Walter Williams concludes his Economics for the Citizen series. And David Henderson, reading the claim that no one is getting wealthier but the already-wealthy, responds, "It Just Ain't So!"

The book reviewers render verdicts on works about the bombing of civilians, the Progressives' remake of the Constitution, an environmentalist's second thoughts, and the words of Ludwig von Mises.

—*Sheldon Richman*
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Only the Rich Are Getting Richer? It Just Ain't So!

BY DAVID R. HENDERSON

"In an era when the rich are the only income group getting richer," begins an article in the April 13 *Washington Post*. (Blaine Harden, "As the Rich Ride In, Many Are Priced Out of Homes on the Range.") But in this one 13-word statement, versions of which have become so common in conversations and newspaper reports, are not one but two mistaken claims.

First, the rich are not an income group but a wealth group. When you say someone's rich, you are typically referring to how wealthy the person is, not to the person's income. Wealth and income are two different things. Wealth is typically measured by a person's net worth—the value of his tangible assets minus his debts. Income is, well, income, the amount of money the person makes or receives annually. Although the two are positively correlated, they are not close to being perfectly correlated. People can be high-income but not wealthy if they spend everything they earn; alternatively, they can be low-income but rich if they started to save early and to invest in assets that appreciated. Many of the elderly in this country are in that position—they have low retirement incomes but high net worths. Indeed, one of the striking findings in the popular book *The Millionaire Next Door*, by Thomas J. Stanley and William D. Danko, is that most of the few million millionaires in the United States have never had particularly high incomes. I would have thought that fact would be common knowledge among reporters who write about the wealthy for such prestigious publications as the *Washington Post*. But apparently not.

It is clear from the rest of Harden's article that he is talking about the wealthy, not about high-income people. That brings us to the next question: are the wealthy—a term that Harden never defines, but he seems to mean people with a net worth of well over one million dollars—the only group getting wealthier? The answer is no. And the data that tell us that are from an article published by the Federal Reserve Board. Every three years the Fed carries out a "Survey of Consumer Finances," and its most recent survey was based on data from 2004. Using those data, Federal Reserve economists Brian Bucks, Arthur Kennickel, and Kevin Moore found that although wealth grew, it grew less between 2001 and 2004 than between 1998 and 2001. The median wealth of families grew by 1.5 percent, adjusted for inflation, while average net wealth grew by 6.3 percent.[1]

It's true that families in the bottom 25 percent, measured by wealth, had on average a $1,400 decline in net worth between 2001 and 2004, going from about $0 to minus $1,400. Families in the second-lowest 25 percent had essentially no change, their average net worth rising from $47,000 to $47,100. (All data are inflation-adjusted to 2004.) But families in the second-highest 25 percent, a group not normally characterized as rich, saw their average net worth climb from $176,600 to $185,400, an increase of 5 percent. Families in the 75th to 90th percentile, again a group not normally characterized as rich, had their average net worth climb from $478,600 to $526,700, an increase of 10 percent. Finally, families in the top 10 percent by wealth, a group normally thought of as rich, had their net worth rise from $2,936,100 to $3,114,200, an increase of 6.1 percent.

In short, "the rich" were not the only group whose wealth rose. Moreover, the biggest percentage increase in

David Henderson is a research fellow with the Hoover Institution and an economics professor at the Naval Postgraduate School in Monterey, California. His latest book, coauthored with Charles L. Hooper, is Making Great Decisions in Business and Life *(Chicago Park Press, 2006).*

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net worth was not for those in the top 10 percent ("the rich"), but for those in the 75th to 90th percentile. To put that in perspective, these were families whose net worth in 2004 was at least $328,500 and no more than $831,600, a group that is clearly well-to-do but not "rich."

But the true increases are understated. As mentioned, these data are in real—inflation-adjusted—terms. To do the inflation adjustment, the Federal Reserve economists used the Consumer Price Index (CPI). But economists have found that the CPI overstates increases in the cost of living in three ways. First, because it measures the cost of a given basket of goods and services over time, it fails to account for people substituting away from goods whose prices went up a lot to goods whose prices went up less, the so-called substitution effect. Second, it fails to account for shifts over time regarding where people buy their goods, the so-called Wal-Mart effect. Third, the CPI fails to account adequately for new products and for quality increases in products (most goods and services not produced by government get better over time). Hoover Institution economist Michael Boskin, who chaired the Advisory Commission on the Consumer Price Index from 1995 to 1996, concludes that even after some reforms were made in computing the CPI, it still overstates annual inflation by 0.8–0.9 of a percentage point.

This might sound small, but over a few years it adds up. Even taking the low end—an overstatement of 0.8 of a point annually—it means that the real net worths of all groups except those in the lowest 25 percent increased. The second-lowest 25 percent, for example, had their net worths climb by 2.4 percent. And we can tack on 2.4 points to the increases in wealth reported for people in the top half.

One large limitation on the use of the Federal Reserve data is that they don't track families but instead just take snapshots. Because people move in and out of wealth categories, just as they move in and out of income categories, we don't really know what's happening to families over time. While the average family is getting wealthier, many families in all wealth categories are getting poorer and many others are getting richer.

Inflated Housing Prices

There is one other limitation. The Federal Reserve study found that, among the groups whose wealth did increase, a major component of that increase was the rise in their equity in their homes. To the extent that this increase was due to government restrictions on building, which MIT economist Edward Glaeser and Wharton economist Joseph Gyourko have found to be the biggest factor in housing-price increases since 1970, it does not represent a real wealth increase but rather an artificial scarcity.[2] The solution would be to relax the restrictions on construction. As a side note, local governments in the United States, spurred on by homeowners, seem dead set on making housing *un*affordable to the lowest 25 percent of the population.

Finally, as noted earlier, it's true that wealth did increase less between 2001 and 2004 than between 1998 and 2001. This higher growth in the earlier period cannot be attributed to the stock-market boom because most of the dot-com crash had occurred by 2001. The lower growth in the later years can in part be attributed to the recession that began in 2001. Probably more important, when a government takes an increasing share of the economy's output and wastes it, the result will be less wealth or, more exactly, less growth in wealth than otherwise. Under George W. Bush federal spending increased from 18.5 percent of gross domestic product in 2001 to 19.9 percent in 2004. For those wondering how to have wealth increase more for people at all levels, a good place to start would be to pare back the size and power of the federal government.

1. "Recent Changes in U.S. Family Finances: Evidence from the 2001 and 2004 Survey of Consumer Finances," www.federalreserve.gov/pubs/bulletin/2006/financesurvey.pdf.

2. "The Impact of Zoning on Housing Affordability," *Economic Policy Review*, 2003, (2), pp. 21–39.

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Central Planning Comes to Main Street

BY STEVEN GREENHUT

A casual reader could be forgiven for skimming through a front-page *Los Angeles Times* article from February 12 and thinking that the story was just another *Times* exposé of political corruption in some Third World backwater. The article is like so many others, offering a tale of a government without contested elections, the use of police powers against political insurgents, and leaders who enrich themselves and choose economic winners and losers within their domain.

On closer examination we learn that the story took place, not in some far-off nation, but in California, in the tiny industrial city of Vernon, located only a few miles south of that newspaper's downtown offices.

"Twenty-five years after its elected officials last had a contested ballot, eight strangers took up residence," the *Times* reported, noting that the newcomers had instantly filed papers to run for city council. "Within days, city utility trucks had turned off their power. The building they shared was slapped with red tags by inspectors who said the property was 'unsafe and dangerous' as a residence. Strobe lights flashed through their windows. They and some of their relatives were placed under surveillance. Shortly, city police and the officials drilled holes in the locks and evicted the would-be office-seekers. Having deprived the interlopers of city residence, Vernon officials on Jan. 27 disqualified them from the ballot."

With the newcomers gone, the old guard could stay in power, eliminating yet another election and clinging to the benefits they receive for running this five-square-mile city of 93 people. Who says small towns can't be plagued by big government?

Because Vernon is, in essence, an industrial park that is incorporated as a city, it is an oddity. But in reality, the city is just an extreme example of what's happening in California and nationwide when it comes to municipal government.

City officials don't see themselves as representatives of the "people" who busy themselves with protecting their rights and providing a few fundamental "services," such as infrastructure, public safety, and the like. Instead, city staff and city councils view themselves as economic developers, charged with luring new businesses, keeping old ones from leaving, and micromanaging their micro economies.

Sometimes their goals sound high-minded (rejuvenating downtown), but basically it's about the cash. Municipal governments are hell-bent on maximizing tax revenues at every turn, and they use their vast powers to achieve that end. It's the corporate state at the local level, yet something that many observers and activists—even libertarians and conservatives—overlook as they fixate on state capitals and Washington, D.C.

Cities have carrots and sticks available to achieve the desired outcomes. In Vernon we see the stick in action. The city controls the entire housing market and used its regulatory powers to deny legal residence to newcomers. One cannot live in a non-approved industrial building, so the city sent code officials and police to drive the new residents out of town. I've never seen this before, but I routinely watch cities deny conditional-use permits (CUPs) to churches that want to locate in industrial parks. That's because city planners know that by shifting a use from industry to religion, they lose some of their tax base.

Steven Greenhut (sgreenhut@ocregister.com) is senior editorial writer and columnist at the Orange County Register *in Santa Ana, Calif. He is author of* Abuse of Power: How the Government Misuses Eminent Domain.

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I have repeatedly seen cities deny approvals for housing tracts for similar reasons—officials view such tracts as a drain on their budget. They much prefer that raw land be used for the construction of big-box stores, hotels, and auto malls, which offer lucrative sales-tax bounty.

The biggest economic-development stick is, of course, eminent domain. That process has gained much attention since last summer, when the U.S. Supreme Court ruled in *Kelo v. the City of New London* (Connecticut) that it's okay for cities to use eminent domain to take nonblighted properties from their owners and give them to developers in order to improve economic development.

The public, understandably, has been outraged at the notion that their homes or small businesses are not safe from the greedy eyes of developers colluding with tax-hungry city officials, and the backlash is still unfolding in Congress and state legislatures. But most of the considerable nationwide focus, and all of the proposed legislative fixes, have been on the act of taking property from one owner and giving it to another owner. Yes, there is a broad understanding that cities do this to expand the tax base, but there has yet to be a wider understanding of the dangers of the entire economic-development process—the driving force behind the eminent-domain controversies.

Too often foes of the eminent-domain aspect of that process bend over backwards to assure officials that they agree with the concept of removing blight and boosting local economies. It's just that cities shouldn't rob one set of owners and benefit another set. Redevelopment is good, as long as eminent domain is left out of the picture, they say.

But it's not just eminent domain that's the problem. It's the entire economic-planning regimen, spoon-fed to cities nationwide by groups such as the National League of Cities and the American Planning Association. It's not just the stick that's the problem, but the carrot, also.

Tools of the Trade

Governments have vast economic-planning tools at their disposal, which usually come with complicated names (Strategic Investment Programs, Tax Increment Financing, Industrial Development Bonds, Enterprise Zones, and more) designed to disguise what they truly are: corporate welfare. The two main categories are direct subsidies and tax breaks, or abatements, in which specific companies or businesses located in specific areas get reductions in their tax payments.

Libertarians are united in recognizing the evil of the first category. Government should not be in the business of robbing Peter and paying Paul. They have different views on the second category. Some argue that any tax break is good, in that it reduces government's transfer of dollars from the private sector to the public sector. Others argue that giving a tax break to one targeted recipient increases the burden on all other taxpayers.

"One theory," says Steve Frates, director of the Rose Institute for State and Local Government in Claremont, California, is "that because government is bloated and not efficient, a targeted tax break can be efficient. The government might tighten its belt, and anytime you cut taxes, it's a good thing. The other argument is that targeted tax breaks allow government decision-makers to make value judgments. Very rarely are government officials good at making such judgments. When they make a decision about economic rewards, it's not based on economic efficiency but on aesthetics, such as deciding they want a new boutique downtown."

Sometimes, Frates argues, government planners succeed at doing things that benefit the city, from a government-finance point of view. Giving a tax break to a car dealership, for instance, might help a city's tax base if the alternative is the dealership locating in a nearby city. But that doesn't necessarily benefit local citizens or the region in general.

The basic question, according to Frates, is: "Does city staff make better decisions than the market?"

Not too tough to answer.

We can argue philosophically about whether a targeted tax break is ever acceptable. The broader point is that such breaks are part of a process whereby local officials pick winners and losers, and those companies that win typically are the ones most adept at political gamesmanship.

In addition to targeted tax breaks, cities offer industrial revenue bonds (IRBs), the interest on which is tax-exempt for investors. As the city of Albuquerque explains in promoting such bonds, "The city issues the bonds but is not making the loan. The investor buying

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the bond makes the loan. The company must find its own bond purchaser. It can also buy its own IRBs. The city technically owns title to the facility built with IRBs and leases it to the company for up to 20 years. At the end of the term, title is transferred to the company. . . . Because the city owns the title to the project, it's exempt for up to 20 years from 95 percent of property taxes on land, buildings, and equipment. And a company may also receive gross receipts and compensating tax exemptions on initial purchases of equipment made with bond proceeds."

Cities can offer direct loans to companies. I've seen cities give major companies valuable commercial real estate for some nominal fee, such as $1. Sometimes cities will float a bond and use that money to build something for the developer. In one California case, the city of Mission Viejo built a parking garage at a privately owned mall, defending its action as part of the city's infrastructure mission.

Sometimes cities will kick back tax revenues to the business, or offer low-interest loans, subsidized by taxpayers. Pretty much any way you can think of to provide benefits to a favored company has been proposed or tried. These financial benefits are often mated with favorable land-use approvals. Usually, city officials defend these policies as net gains: the city supposedly gets more back in tax revenue than it loses from the transfer. How many times have we heard mayors boast about the latest "win-win" situation? It's not much of a win for taxpayers, who see some of their dollars used to build infrastructure for the new project. Typically, tax dollars are diverted from traditional public services, such as police, fire, and libraries, to parking garages, roads, and other elements of the new redevelopment project.

The Grand Plan

Specific incentives, whether tax breaks or outright subsidies, aren't offered in a vacuum. They are usually part of some grand redevelopment idea. If, for instance, a city wanted just to keep a business from leaving by reducing that business's taxes, that's fairly understandable, even if objectionable compared to an across-the-board tax cut. I've witnessed that in small rustbelt cities which were sure they couldn't afford to lose a major employer.

Increasingly, though, cities are not content using incentives for the occasional hard case. The goal is to embrace an overall central-planning vision, in which local officials carefully control land use and manipulate the market to bring in the highest amount of tax revenues for the city.

There are slightly different rules and processes in each state, but it's done basically the same way everywhere. In California the process is known simply as "redevelopment." Everyone is in favor of redeveloping grimy areas, so the process has marched along its merry way with little criticism for many years.

"There is an unknown layer of government in California, which few understand," explains the booklet "Redevelopment: The Unknown Government," by Orange County supervisor Chris Norby. "This unknown government currently consumes 8 percent of all property taxes statewide. . . . It is supported by a powerful Sacramento lobby, backed by an army of lawyers, consultants, bond brokers and land developers. Unlike new counties, cities and school districts, it can be created without a vote of the citizens affected. Unlike other levels of government, it can incur bonded indebtedness without voter approval."

This unknown government can lavish subsidies on companies and use eminent domain to take properties away from existing owners. Cities—the redevelopment agency is typically run by the city council and city staff—create project areas within their boundaries. Some cities have made their entire boundary a project area.

In California and some other states the agency must first discover "blight" before creating a project area. Almost anything passes for blight. For instance, municipalities can call areas blighted if they have excessive urbanization or too little urbanization, if the median property values are below the state median, or if officials find "piecemeal development" (most properties in an area owned by different owners) or even chipping paint on a few houses.

Blight is usually discussed in the context of eminent domain, because once an area is found to be blighted officials can use that power. But the discovery of blight is also the cornerstone for the creation of these often massive redevelopment areas that transfer decision-making from individual property owners to the government.

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Within those areas, government can do largely as it chooses, from taking properties to lavishing subsidies on specific developers.

The key financial mechanism that supports "redevelopment" is Tax Increment Financing, or TIF. It works this way: property-tax revenues from a project go to the city's redevelopment agency, which must use those dollars to pay off bonds that were floated to finance the project. So instead of the tax dollars going to traditional government services, such as road building, schools, and the fire department, the money goes to the agency for development, which gives cities a huge incentive to create as many project areas as possible. It means money and power.

The theory is that the city deserves the new tax dollars because its efforts are improving the supposedly blighted area. But the reality is quite different. Cities don't often use TIF to fix up blight, but to increase their tax base. Often they engage in what is called "growth capture"—city planners wait until a stable or depressed area is starting to bounce back on its own. They then brand the area "blighted" and use that as an excuse to capture the new values and transfer the gain from the old owners, who held onto the properties during the lean years, to new developers who savor the prospect of getting prime property for far-below-market rates.

Because those tax-increment dollars must be used to pay off debt, the cities engage in wild debt-spending sprees. One small city in California with 32,000 people (Brea) racked up more than $600 million in total indebtedness in part to bulldoze its old downtown and create a brand-new one from scratch, built by one developer.

The financial aspect of this is shaky. The redevelopers depend on a constant long-term stream of revenue (usually for the 30-year life of the bond) to pay off the debt used to fund the project. But central plans don't always work as well as the central planners hope. I've witnessed quite a few failed projects, and have watched cities constantly ratchet up the redevelopment game to feed the beast.

Is the tax increment in the project area less than expected due to an economic downturn or competition from a neighboring city engaged in a similar retail project? If yes, then cities create new project areas that can bring in even more tax dollars to backfill the shortfall from the old project areas. Redevelopment debt gets constantly refinanced, and cash-hungry cities frantically look for new projects by luring businesses from neighboring cities.

In southern California, where one city runs into the next, the cross-town rivalry can become intense. It doesn't often matter to, say, a car dealership whether it locates on one side of the 57 freeway in Placentia or the other side in Fullerton. So cities will bid up the subsidies, and current councils will let future councils clean up the mess if the promises don't pan out.

Does It Work?

When these proposed projects are debated before the public (sometimes the projects are snuck through redevelopment agency meetings as quietly as possible to avoid public outrage), city-council members and staff talk about all the great economic benefits that will flood the community. The Favored Developer will stand before the council and show his architecturally lovely drawings of the new downtown, new industrial park, new neighborhood, or new retail center.

I'm reminded of journalist Henry Hazlitt's story about the bridge in *Economics in One Lesson*: "When providing employment becomes the end, need becomes a subordinate consideration. 'Projects' have to be *invented*. Instead of thinking only of where bridges *must* be built the government spenders begin to ask themselves where bridges *can* be built. Can they think of plausible reasons why an additional bridge should connect Easton and Weston? It soon becomes absolutely essential. Those who doubt the necessity are dismissed as obstructionists and reactionaries."

While redevelopment is more about tax revenue than job creation, the same process is at work. Officials look for reasons to create a project. Then the whole economic well-being of the community rests on the shoulders of that project. Those who criticize the project are indeed deemed reactionaries who don't care about the future of the community. Years later, no one examines whether the project actually did as promised, and by then a new council is on to another great idea.

Here's Hazlitt's bigger point:

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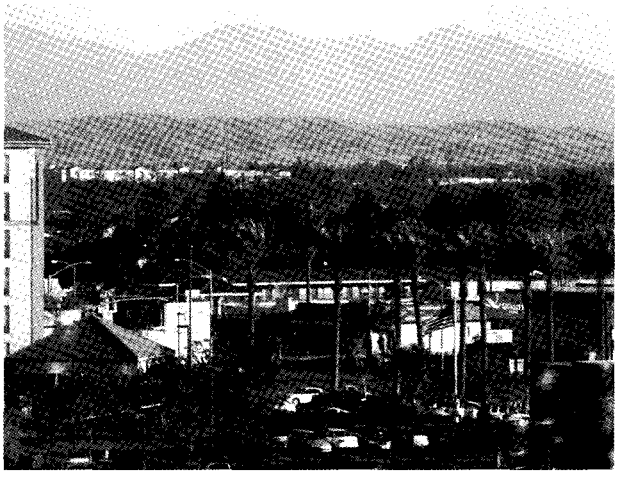
The bridge exists. It is, let us suppose, a beautiful and not an ugly bridge. It has come into being through the magic of government spending. Where would it have been if the obstructionists and the reactionaries had had their way? There would have been no bridge. The country would have been just that much poorer. Here again the government spenders have the better of the argument with all those who cannot see beyond the immediate range of their physical eyes. They can see the bridge. But if they have taught themselves to look for indirect as well as direct consequences they can once more see in the eye of imagination the possibilities that have never been allowed to come into existence. They can see the unbuilt homes, the unmade cars and washing machines, the unmade dresses and coats, perhaps the ungrown and unsold foodstuffs.

Yes, redevelopment and corporate subsidies bring to fruition specific projects, some of which are pretty nice, create jobs, and offer valuable things.



Officials in Garden Grove, California, "invested" heavily in hotel construction.

The issue is what we don't see. Redevelopers act as if nothing would be built on the spot had they not built it. This is a ludicrous argument here in Orange County, where land often tops $1 million an acre. Something good, even better than the current project, would certainly have been built in most instances had the market been left to its own devices.

A Net Loser

Even on their own terms, however, these projects typically don't pan out. In Garden Grove, California, officials were intent on capturing tourist dollars from the nearby Anaheim Disneyland resort area, so they "invested" heavily in hotel construction. As an *Orange County Register* editorial explained in 2004, officials in 2000 predicted $33 million in revenue to the city after seven years, but revenues ended up at a mere $13.6 million after three and a half years. Then after the loan and bond payments were subtracted, the gain totaled $2.7 million over that period. Activists argue that if the cost of the land and other costs are figured in, the city was a net loser in the process.

And because the dollars are far short of what was predicted, Garden Grove officials have been on a mission to develop an attraction (theme park or Indian casino) that will keep the underused hotels filled. That mission has driven them to consider using eminent domain against well-maintained neighborhoods and to shower even more subsidies on corporations. Here we see how central planning pushes officials to first abuse taxpayers and then abuse landowners.

"Does the tax abatement method meet with success?" asked Michael LaFaive of the Mackinac Center for Public Policy in a 1999 article. "Not as much as if local officials simply would keep taxes low in the first place. CRC [Citizens Research Council of Michigan] found that economic growth takes place in jurisdictions where taxes are low and which consequently grant fewer abatements."

Even free-enterprise-oriented economic development ideas fall short. Remember "enterprise zones," the brainchild of former congressman and Housing and Urban Development secretary Jack Kemp? Based on the sound idea that grimy areas could be fixed up by reducing regulations and taxes, the Reagan administration made this the basis of its urban policy. Yet because the zones ultimately became the creature of government rule-makers, the results have been less than stellar. A *Los Angeles Times* article from January found that such zones have produced few jobs for low-income people in California.

"Businesses in upscale areas such as the Long Beach waterfront and San Francisco's fashionable South of Market district get tax breaks because zone boundaries are based on decades-old census data," the newspaper reported. "Employees of such companies who live in town houses in and around parts of San Francisco's

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exclusive Nob Hill neighborhood, beach lofts in Long Beach and vintage bungalows of Oakland's upscale Rockridge district can qualify their employers for credits; dated maps show those neighborhoods as low-income. The state is subsidizing six-figure salaries in these zones."

The obvious point: If fewer regulations and lower taxes cause an economic boom, why not simply reduce regulations and taxes across the board?

Local economic planning, especially the creation of redevelopment project areas, actually slows down neighborhood improvement. Once an area is deemed a redevelopment area, property owners stop investing in their properties because they are not sure that they will ultimately reap the benefit of the investment. They become subjects of the central planners who will make the main decisions that affect the economic vitality of the area.

The *L.A. Times* in 2000 did a computer analysis of North Hollywood, recipient of some of the most aggressive redevelopment activities in the region. "Two decades and $117 million in public money later, efforts by the city of Los Angeles to rescue suburban North Hollywood from creeping blight have largely struck out," the newspaper concluded. "Of perhaps greater significance, North Hollywood's recovery has lagged behind other depressed areas in Los Angeles that improved without any money from the city's CRA [Community Redevelopment Agency], according to the Times analysis of census, property and employment data."

Could it be that the marketplace works after all?

Problems with Incentives

Most city managers and economic-development officials that I've talked to fancy themselves as CEOs of companies, and they argue that what they are doing is no different from what private companies do: maximizing revenues. "Why wouldn't a libertarian support what we're doing given that you value private business and understand the importance of profit?" I've often been asked.

The answer is simple. Cities are not businesses. They take the tax dollars of residents and make decisions about land use that are backed by police powers. They do not operate in a market; they do not have voluntary stockholders. Despite the delusions of city managers, the city staff usually is not as sophisticated or as skilled as corporate staff, which means cities often get a poor deal when negotiating with rent-seeking corporations.

When cities insert themselves into the economic development game, either with carrots or sticks, they:

- Shift decision-making from individuals to governments;
- Take money from taxpayers and redistribute it to individuals and companies;
- Undermine property rights and other freedoms;
- Encourage a class of rent-seekers, who learn to lobby city officials for favors and special financial benefits;
- Put unfavored businesses at a competitive disadvantage with those who are favored; and
- Stifle political dissent, as companies that are dependent on the city for lucrative work become reluctant to speak their minds about any number of city issues.

Despite what city managers will tell you, the choice is not between economic development and letting a city rot. The choice is between central planning, empowering officials to decide which businesses are worthy of their help, and the good old free market, which lets free people decide which business should succeed or fail.

City officials like to be "proactive," as they say, and help with economic development. There is something they can do. They can get out of the way, by lowering tax rates, deregulating, ending zoning restrictions, and eliminating exclusive contracts with utilities and developers. It's not out of the question. The city of Anaheim is doing just that, with remarkable results.

Mackinac's LaFaive puts it well in a 2003 article: "The best business climate is one in which government 'sticks to its knitting' and does its particular assignments well, at the lowest possible cost while creating a 'fair field with no favors' environment for private enterprise."

Not a bad template. Sure beats a world of central planning, where city officials can choose who gets handouts and even who gets driven out of town.

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Government Putts

BY LAWRENCE W. REED

Mark Twain once said that the game of golf was nothing more than "a good walk spoiled." But to avid golfers, such impertinence obscures a cardinal truth: The sport is infinitely complex and not for everybody.

Golf requires patience, concentration, and forbearance. Distractions must be ignored or compensated for by careful planning. A serious player must learn from his mistakes and be earnest about continuous improvement. A long-term perspective is a must so that no bad day becomes a deterrent to the next match. Golf etiquette demands a healthy respect for the rights of others and a fealty to the rules. Honesty is not only the best policy in the game, it is the *only* policy for any true gentleman of golf. Percy Boomer is reputed to have said that if you want to hide your true character, don't play golf.

And while among friends one mulligan per round may be acceptable, it is unforgivable to ignore repeated failure and pass off your score as far better than it truly is.

From these unassailable facts, one certain conclusion can be derived: Golf is no legitimate concern of government. Former California Governor George Deukmejian put it well when he observed that "The difference between golf and government is that in golf you can't improve your lie."

Few Americans would regard golf as a "core" government function, but officials in one municipality apparently think it's important enough to consider swiping a private course and making it their city's very own. Earlier this year it was revealed that the Village of North Hills on New York's Long Island would like to use eminent domain to condemn and seize the Deepdale Golf Club and its 18-hole course, and then convert it to city-owned links for village residents only.

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Deepdale is not a cow pasture. It's one of the finest courses in the nation, a playground for the rich and famous. Comedian Bob Hope regarded it as one of his favorites. North Hills is not even claiming it's "blighted"—a ploy often used by municipalities to confiscate attractive properties so they can hand them over to someone else who might pay higher taxes than the previous owners. No, the bureaucrats and political empire-builders who run North Hills just want to be in the golf business and would rather not get their hands dirty by investing their own money to build or buy a course. In fact, if the seizure takes place, a private entity will go off the tax rolls and become a tax-eating public one. The compassionate, public-spirited mayor pushing the scheme says, "I only do what's in the best interests of village residents." (Muammar Qaddafi says that a lot too.)

I've always thought that if all that local governments did was keep the streets safe, the traffic moving, and the sewers flowing, they would have a full-time job on their hands. I figure that if a service can be found in the Yellow Pages, it probably doesn't need to be done by the government. In my state of Michigan, we have 823 privately owned golf courses—an average of ten for every Michigan county. But we also have 91 courses owned by various units of government, including seven owned by state universities. How do municipalities and universities

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find time from the conventional duties of government to manage golf courses? Could the golf distraction help explain why their conventional duties often get done poorly at excessive expense?

When a private company sells a product at a price that somebody else thinks is "below cost," you can bet that some self-anointed consumer advocate will cry "Dumping!" and demand the company raise the price. But where are the anti-dumpers when government golf courses do the same? One former private-course owner in my state paid $200,000 a year in property taxes while the local municipal links paid nothing and also ran $10 specials for 18 holes. That's a big reason why the private-course owner is now a *former* private-course owner.

One former private course owner in my state paid $200,000 a year in property taxes while the local municipal links paid nothing and also ran $10 specials for 18 holes. That's a big reason why the private-course owner is now a *former* private-course owner.

Consider the new $13.4 million county-owned Lyon Oaks Golf Course, which opened in Michigan's Oakland County in 2002. Oakland is the state's richest county, and home to no fewer than 22 of the state's 91 government-owned golf courses. Some of the taxes paid by the 70 private courses in the county go to subsidize their government competition. Furthermore, the golf expert on my staff, Michael LaFaive (he researches and writes about golf better than he plays it), determined that Lyon Oaks received three state grants worth $2.4 million and $5.1 million more from the sale of tax-exempt government bonds. Among its various, attractive amenities is a hard-to-get, state-issued liquor license. LaFaive argues that no matter how you slice it, golf courses are one big financial sand trap for taxpayers or private competitors, or both.

So does Stephen Schmanske, economist and author of the 2004 book *Golfonomics*. He analyzed the record of 104 private and public golf courses in the San Francisco Bay area between 1893 and 2001. He found that municipal links actually deterred the entry of other courses and reduced the total number in the area. Schmanske recommends privatization to increase both the number of courses and the number of golfers. That strongly counters the already weak claim that government needs to play golf to increase public access to the sport.

Then there's a story from the March 6, 2006, *Ann Arbor News*. Never mind that the city's two municipal courses pay no taxes; the city has lost about a million dollars just keeping them open in spite of a 50-percent hike in fees. So far this decade, the number of rounds played has fallen by nearly half. The story says "the city would be satisfied just to break even." City officials are having a hard time grappling with the obvious solution: Get Ann Arbor out of the golf business.

In any event, government golf makes even less sense than cents. Government shouldn't be doing pizza, bungee-jumping, or dog-sitting either, and for all the same reason. These are not activities, profitable or not, that fall within the proper sphere of legal and moral coercion. It's widely accepted that government can legitimately use force (cops, courts, tanks, and taxes) to keep the peace, but to whack little white balls around a field?

Gimme me a break, if not a mulligan.

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Wal-Mart Wasn't Always the Biggest

BY JOHN SEMMENS

Editor's note: As we went to press, and as if to illustrate the point of the following article, *Fortune* released its 2006 list of largest corporations, showing Exxon Mobil, not Wal-Mart, on top.

For all the gnashing of teeth over the current dominant position of Wal-Mart in the standings among America's largest corporations, one might think that it has held the top ranking forever. It hasn't. Wal-Mart has been the top-ranked firm in the Fortune 500 only since 2002. It has been in the top 500 only since 1995. Other corporations have held the top ranking for most of the last 50 years.

Back in 1955 *Fortune Magazine* published its first Fortune 500 listing of the biggest businesses in America. General Motors topped that list. At the time some people believed that General Motors was "too big." More than half the cars sold in America in 1955 were manufactured by GM. Congress launched investigations of GM's purported attempts to monopolize the American automobile industry.

GM was simultaneously accused of pricing its cars too high for many working Americans to afford and so low that they threatened to run their competitors out of business. Sensible people might marvel at the reasoning behind this type of accusation. The notion that prices could be both too high and too low defies logic. Nevertheless, our lawmakers have crafted antitrust rules designed to fight such practices. In fact, the antitrust code is fairly comprehensive in terms of the type of pricing schemes that are deemed to be in violation of the law.

Prices that are too low are considered "predatory." That is, these low prices are perceived to be aimed at forcing rivals out of business so the "predatory" firm can monopolize the industry. Prices too high are considered evidence that the offending firm already must have monopoly power—how else could it enforce such a high-price policy? Prices that match those of competitors are viewed as evidence of conspiracy—how else could supposedly independent firms post the exact same prices?[1]

Since there is no pricing option left uncovered by antitrust laws, every business in America is potentially subject to investigation and prosecution.

Under badgering from Senate inquisitors in 1953, Charlie Wilson, the chairman of General Motors, asserted, "I thought that what was good for the country was good for General Motors, and what's good for General Motors is good for the country."[2] While it may have been a bit presumptuous for Wilson to conflate the good of GM with the good of the nation, it is hardly evidence of evil. Yet the statement inspired demands for government action to humble this corporate giant. Legend has it that a chastened Wilson decided that his company would never sell more than 50 percent of the cars in America.

Exxon has been GM's longtime rival for the top spot in the Fortune 500. By 1975 Exxon became the largest American business. Political events in the Middle East drove the price of oil up. As a vendor of this now

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scarcer commodity, Exxon vaulted to the top of the rankings. By 1978, though, GM was back on top. GM and Exxon took turns sharing the top spot until 2002, when Wal-Mart took over the lead.

The alternative to success is failure. This is the ultimate fate of most businesses. Three out of every five business starts end in bankruptcy within five years. Only a tiny minority of new businesses grows into the huge corporations that make up the Fortune 500. Once a business makes the list, there is no guarantee it will stay there.

If we look at just the top ten on the first Fortune 500 list from 1955 and compare it to the most recent list, we find only three holdovers. Seventy percent of the firms in the top ten in 1955 have been displaced by other firms. Famed economist Joseph Schumpeter likened the top ranks of business to a hotel where the guests are always changing.[5]

Human beings are lazy and greedy (or energy-conserving and ambitious—if you prefer less negative-sounding descriptions of the same phenomena). People can satisfy other people's desires by providing products and services that cater to the inherent laziness of the species. In a true free market, to the extent that a business aptly discerns those desires and efficiently fulfills them, it will prosper. Firms in an unfettered marketplace become the biggest because they have effectively fulfilled more desires than their rivals.

Since no one firm can corner all the individuals within its organization, it will have to do constant battle to try to fend off those who have their eye on its current piece of the economic pie. If there is money to be made by serving human wants, firms will endeavor to serve them. Successful businesses spawn imitators and rivals aiming to cut themselves a piece of that pie. In the free market, the only way to cut oneself a bigger piece is by offering a better value.

Within the mixed economy Wal-Mart rose to the top by offering consumers better value—as perceived by freely choosing customers. How long Wal-Mart will stay on top is unknown. It possesses no patent on vending merchandise. Other businesses are free to copy its techniques, and several have. There are also innovations that threaten Wal-Mart's main mode of business. More and more people are becoming comfortable with shopping

1955 Fortune List

	Company	Revenues ($ millions)	Profits ($ millions)
1	*General Motors*	9,823	806
2	*Exxon*	5,661	585
3	U.S. Steel	3,250	195
4	*General Electric*	2,959	213
5	Esmark	2,511	19
6	Chrysler	2,072	18
7	Armour	2,056	2
8	Gulf Oil	1,705	183
9	Mobil	1,704	184
10	DuPont	1,688	344

2005 Fortune List

	Company	Revenues ($ millions)	Profits ($ millions)
1	Wal-Mart Stores	288,189	10,267
2	*Exxon Mobil*	270,772	25,330
3	*General Motors*	193,517	2,805
4	Ford Motor	172,233	3,487
5	*General Electric*	152,363	16,593
6	ChevronTexaco	147,967	13,328
7	ConocoPhillips	121,663	8,129
8	Citigroup	108,276	17,046
9	American Intl. Group	98,610	11,050
10	IBM	96,293	8,430

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on the Internet. Wal-Mart's "big box" stores may be shunned as more shop from the convenience of their own homes.

As people become wealthier the lure of "always low prices, *always*" may dwindle. The attraction of "upscale" lifestyles may divert customers away from Wal-Mart. Target, a key Wal-Mart rival, has been accelerating its growth by offering trendy-but-affordable designer merchandise. That Target's sales have been rising twice as fast as Wal-Mart's in the last year has caught the attention of Wal-Mart's management,[4] and it is aiming more at upper-income shoppers.[5] Whether this will be successful, though, is a big question. When you've created such a dominant position for yourself as a low-price vendor, it may be difficult to convince buyers that you can also offer upscale merchandise.

In the market the competition never ends. The race is never over. There is never a final winner. Any lead can be, and most probably will be, overtaken at some point in the future. Rather than fret over the current standings, people should take advantage of the products and services offered by competing business—rewarding those that serve them best as a spur to the improvement of all.

> Firms in an unfettered marketplace become the biggest because they have effectively fulfilled more desires than their rivals.

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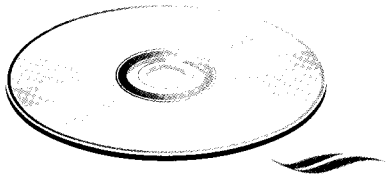

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Democracy Versus Liberty

BY JAMES BOVARD

If a foreign power took over the United States and dictated that American citizens surrender 40 percent of their income, required them to submit to tens of thousands of different commands (many of which were effectively kept secret from them), prohibited many of them from using their land, and denied many the chance to find work, there would be little dispute that the people were being tyrannized. Yet the main difference between the current reality and the foreign-invasion scenario is the democratic forms by which government power is now sanctified.

There are few more dangerous errors in political thinking than to equate democracy with liberty. Unfortunately, this is one of the most widespread errors in America—and a key reason why there are few leashes left on government power. As Nobel laureate F. A. Hayek observed in a 1976 speech, "The magic word democracy has become so all-powerful that all the inherited limitations on government power are breaking down before it. . . . It is unlimited democracy, not just democracy, which is the problem today."[1]

There are few more dangerous errors in political thinking than to equate democracy with liberty.

People have long been encouraged to confuse self-government of their own lives with "self-government" via majority rule over everyone. Because abusive rule by foreigners or a king personified oppression, many presumed that rule by people of one's own nationality meant freedom. Boston pastor Benjamin Church proclaimed in 1773 that liberty was "the happiness of living under laws of our own making. Therefore, the liberty of the people is exactly proportioned to the share the body of the people have in the legislature."[2] However, the rampages of state and local majorities during and after the American Revolution debunked this naïve faith in majorities.

Americans quickly recognized that liberty meant lack of coercion—especially lack of government coercion. "The Restraint of Government is the True Liberty and Freedom of the People" was a popular motto of the late 1700s.[3] John Phillip Reid, in his seminal work, *The Concept of Liberty in the Age of the American Revolution*, observed that liberty in the eighteenth century was "largely thought of as freedom from arbitrary government. . . . The less a law restrained the citizen, and the more it restrained government, the better the law."[4] This concept of freedom continued into the early part of the twentieth century.

But as time passed, enthusiasm for government power returned and different concepts of freedom arose to again vindicate awarding unlimited power to the majority. Progressive Herbert Croly, one of President Theodore Roosevelt's favorite writers, declared in 1909, "Individual freedom is important, but more important still is the freedom of a whole people to dispose of its own destiny."[5] However, in practice, this means the "freedom of the whole people" to dispose of individuals' rights, property, and lives.

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This confusion has prospered in part because, throughout Western history, tyrants and tyrant apologists have sought to browbeat citizens into obedience by telling them that they are only obeying themselves. The eighteenth-century French political philosopher Jean-Jacques Rousseau used this bait and switch to sanctify democracy. Rousseau wrote: "Each man, in giving himself to all, gives himself to nobody. . . . Each of us puts his person and all his power in common under the supreme direction of the general will, and, in our corporate capacity, we receive each member as an indivisible part of the whole."[6] The general will is "infallible," and "to express the general will is to express each man's real will." Rousseau taught that people need not fear a government animated by the general will because each citizen would be "obeying only myself."[7] And because the people's will would actuate government, the classical warnings on the danger of government power became null and void. The horrors of the French Revolution cast Rousseau's doctrines into temporary disrepute, but his intellectual contortions permeated subsequent thinking on democracy and government.

Some U.S. presidents who have been most enthusiastic on seizing power have exonerated themselves by claiming that "the people did it." FDR declared in 1938, "Let us never forget that government is ourselves and not an alien power over us,"[8] and Bill Clinton declared in 1996 that "The Government is just the people, acting together. . . ."[9] In his 1989 farewell address, Ronald Reagan asserted, " 'We the People' tell the government what to do, it doesn't tell us. 'We the people' are the driver—the government is the car. And we decide where it should go, and by what route, and how fast."[10] But the American people did not choose to drive into Beirut and get hundreds of Marines blown up, or choose to run up the largest budget deficits in American history, or provide thousands of antitank weapons to Ayatollah Khomeni, or have a slew of top political appointees either lie or get caught in conflicts of interest or other abuses of power or ethical quandaries between 1981 and 1988.

Invoking "the government is the people" is one of the easiest ways for a politician to shirk responsibility for his actions. This doctrine makes sense only if one assumes that government's victims are subconscious masochists and government is only fulfilling their secret wishes when it messes up their lives.

The notion that democracy automatically produces liberty hinges on the delusion that "people are obeying themselves." But, as *Freeman* editor Sheldon Richman commented, "When you rushed to finish your income tax return at the last minute on April 15, were you in fear of yourself and your fellow Americans or the IRS?"[11] People who exceed the speed limit are not "self-ticketed." People who fail to recycle their beer bottles are not self-fined, as if the recycling police were a mere apparition of a guilty conscience.

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Is a citizen governing herself when she is arrested for possessing a handgun in her own home for self-defense in a crime-ridden District of Columbia neighborhood where police long since ceased providing minimum protection? Is a 20-year-old citizen governing himself when he is arrested in his own home by police for drinking a beer? The fact that a majority—or, more likely, a majority of the minority who bothered to vote—may have sanctioned such laws and government powers has nothing to do with the self-government by each citizen of his own life.

Yet by assuring people that they are the government, this makes all the coercion, all the expropriation, all the intrusive searches, all the prison sentences for victimless crimes irrelevant. At least for the theoreticians and apologists of democracy.

Praising Democracy to Unleash Government

The more vehemently a president equates democracy with freedom, the greater the danger he likely poses to Americans' rights. Abraham Lincoln was by far the most avid champion of democracy among nineteenth-century presidents—and the president with the greatest visible contempt for the Constitution and the Bill of Rights.[12] He swayed people to view national

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unity as the ultimate test of the essence of freedom. That Lincoln suspended habeas corpus, jailed 20,000 people without charges, forcibly closed hundreds of newspapers that criticized him, and sent in federal troops to shut down state legislatures was irrelevant because he proclaimed "that this nation shall have a new birth of freedom, and that government of the people, by the people, for the people shall not perish from the earth."

President Woodrow Wilson pioneered the democracy-as-salvation bosh. Yet his administration had the worst civil rights record since the Civil War—imposing Jim Crow restrictions on federal employees that resulted in the mass firing of black civil servants. After taking the nation into World War I, Wilson rammed a Sedition Act through Congress that empowered the feds to imprison anyone who muttered a kind word for the Kaiser.[13] Wilson pushed conscription through Congress—as if his goal of having "a seat at the table" at the postwar peace conferences entitled him to dispose of a hundred thousand American lives. Wilson's constant invocation of democracy shielded him against a popular backlash, at least until the fraud of the peace settlement became widely recognized.

Franklin Roosevelt's presidency was the clearest turning point in the American understanding of freedom. In a 1937 speech on the 150th anniversary of the signing of the Constitution, FDR declared that "even some of our own people may wonder whether democracy can match dictatorship in giving this generation the things it wants from government." FDR's comment was part of his attack on those who opposed his seizure of power over property, wages, and contracts. Earlier that year, in his second inaugural address, he bragged, "In these last four years, we have made the exercise of all power more democratic; for we have begun to bring private autocratic powers into their proper subordination to the public's government." When the Supreme Court found many of Roosevelt's power grabs unconstitutional, he announced plans to wreck the power of the Court by stacking it with new appointees—showing his contempt for any limits on his power. "FDR freedom" meant presidential supremacy—and nothing else.

In his 1941 State of the Union address, FDR announced the "four freedoms"—"freedom of speech and expression—everywhere in the world"; "freedom of every person to worship God in his own way—everywhere in the world"; "freedom from want—which, translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants—everywhere in the world;" and "freedom from fear—which, translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbor—anywhere in the world." FDR's revised freedoms ignored most of all the specific limitations on government power contained in the Bill of Rights. Now, instead of a liberty for each to live his own life and go his own way, Roosevelt offered freedom from fear and freedom from want—"freedoms" that require omnipresent government surveillance and perpetual government intervention. Roosevelt perennially invoked freedom as a pretext to increase government power. His promises of freedom for the entire world distracted attention from how his administration was subjugating Americans. Partly because Americans in the 1930s and early 1940s were less politically astute than those of the Founding era, FDR's bait and switch worked like a charm—and was canonized into American folklore by Norman Rockwell and others.

Complacent about Liberty

Freedom became increasingly bastardized in the decades after FDR. President Nixon, like most of his predecessors, encouraged Americans to be complacent about their liberty. In 1973, in his second inaugural address, he declared: "Let us be proud that our system has produced and provided more freedom and more abundance, more widely shared, than any other system in the history of the world." Americans later learned that, at the time of Nixon's statement, the FBI was involved in a massive campaign to suppress opposition to the government and to the Vietnam War, and Nixon himself was involved in obstructing the investigation of the Watergate break-in and related crimes. But Nixon may not have seen such actions as a violation of liberty because, as he explained to interviewer David Frost in 1977, "When the president does it that means that it is not illegal." Frost, somewhat dumbfounded, replied, "By def-

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inition?" Nixon answered, "Exactly. Exactly."[14]

President Clinton openly scapegoated freedom for many problems caused by government (such as welfare programs). In a 1994 interview with MTV he declared, "When we got organized as a country and we wrote a fairly radical Constitution with a radical Bill of Rights, giving a radical amount of individual freedom to Americans, it was assumed that the Americans who had that freedom would use it responsibly. . . . What's happened in America today is, too many people live in areas where there's no family structure, no community structure, and no work structure. And so there's a lot of irresponsibility. And so a lot of people say there's too much personal freedom. When personal freedom's being abused, you have to move to limit it."[15]

But the Bill of Rights did not give freedom to Americans; instead, it was a solemn pledge by the government that it recognized and would not violate the pre-existing rights of individuals. The Bill of Rights was not "radical" according to the beliefs of Americans of that era; it codified rights both long recognized in English common law and purchased in blood during the Revolution. The Founding Fathers had difficulty getting the Constitution approved in many states not because it was "radical" in giving people rights—but because it was perceived as concentrating too much power to violate rights within the federal government. Yet by painting freedom as a gift of the government, Clinton distracted people from recognizing the threat that any government—democratic or otherwise—poses to their rights.

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President George W. Bush uses *freedom* and *democracy* interchangeably, as if they were two sides of the same wooden nickel. Bush explained to a Dutch journalist in May 2005: "Holland is a free country. It's a country where the people get to decide the policy. The Government just reflects the will of the people. That's what democracies are all about."[16] Later that day he was questioned by another Dutch journalist:

Q. How do you define freedom?

The President. Freedom, democracy?

Q. Freedom as such.

The President. Well, I view freedom as where government doesn't dictate. Government is responsive to the needs of people. . . . That's what freedom—government is of the people. We say "of the people, by the people, and for the people." And a free society is one if the people don't like what is going on, they can get new leaders. . . . That's free society, society responsive to people.[17]

And as long as government claims to respond to the people, the people are free, no matter how much the government abuses them.

Bush Freedom hinges on government as the savior of freedom. Debates over the PATRIOT Act provided further opportunity for degrading the American vocabulary. Former Attorney General John Ashcroft titled the August 2003 launch speech of his national PATRIOT Act promotion tour "Securing Our Liberty: How America Is Winning the War on Terror." Earlier in 2003 Ashcroft characterized Justice Department antiterrorist deliberations this way: "Every day we are asking each other, what can we do to be more successful in securing the freedoms of America and sustaining the liberty, the tolerance, the human dignity that America represents."[18]

Ashcroft's successor, Alberto Gonzales, used the same rhetoric to sanctify the PATRIOT Act: "Congress did a good job in striking the appropriate balance between protecting our country and securing our liberties."[19] The PATRIOT Act authorized confiscations of travelers' money (in violation of a Supreme Court ruling), the use of new surveillance software that could vacuum up millions of people's e-mails without a search warrant, nationwide "roving wiretaps," and seizing library, bookstore, and other business and financial records based solely on subpoenas issued by FBI field offices on the flimsiest of pretexts.[20] After the PATRIOT Act was signed, there was a

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hundredfold increase in the number of emergency spying warrants issued solely on the Attorney General's command—and later rubber-stamped by the Foreign Intelligence Surveillance Court.[21] But all the violations of Americans' rights and liberties by federal agents are irrelevant because the proclaimed intent of the PATRIOT Act is to "secure liberty." There is no freedom without security, and no security without absolute power.

Intellectuals Join In

It is not only politicians who seek to confuse people about the reality of liberty. Intellectuals who should know better join in the circus shell game. Former federal judge and Supreme Court nominee Robert Bork in 1996 called for "a constitutional amendment making any federal or state court decision subject to being overruled by a majority vote of each House of Congress." Bork appealed to "our most precious freedom, the freedom to govern ourselves democratically."[22] According to this view, the greatest danger to freedom is having frustrated legislators.

What are the mechanics by which majority-mandated shackles liberate the individual? How does a shackle supported by 51 percent of the populace affect an individual differently from one endorsed by a mere 49 percent? Is the secret to democracy some law of inverse political gravity—so that the more people who support imposing a shackle, the less it weighs? Are citizens obliged to pretend that any restriction favored by the majority is not a restraint but instead a badge of freedom? Shackles are shackles are shackles, regardless of what rhetorical holy water they are blessed with.

People are taught that, thanks to democracy, coercion is no longer dangerous because people get to vote on who coerces them. Because people are permitted a role in choosing who will be in charge of the penal code, they are free. Being permitted to vote for politicians who enact unjust, oppressive new laws magically converts the stripes on prison shirts into emblems of freedom. But it takes more than voting to make coercion benign.

The fiction of majority rule has become a license to impose nearly unlimited controls on the majority and everybody else. The doctrine of "majority rule equals freedom" is custom-made to turn mobs of voters into spoiled children with a divine right to plunder the candy store. The only way to equate submission to majority-sanctioned decrees with individual freedom is to assume that individuals have no right to live in any way that displeases the majority.

The more confused people's thinking becomes, the easier it is for rulers to invoke democracy to destroy freedom. The issue is not simply Lincoln's, Roosevelt's, Clinton's or Bush's absurd statements on freedom but a cultural–intellectual smog in which politicians have unlimited leeway to redefine freedom. If politicians can redefine freedom at their whim, then they can raze limits on their own power.

It is better that government be representative than nonrepresentative. But it is more important that governments respect people's rights than fulfill some people's wishes to oppress other people. The rules that a person must obey are more important than the identity of the nominal rulers. Herbert Spencer wrote in 1857, "The liberty which a citizen enjoys is to be measured, not by the nature of the governmental machinery he lives under, whether representative or not, but by the relative paucity of the restraints it imposes on him."[23] The existence of democracy does not change the meaning of individual liberty. A person is free or not free, regardless of how many people approve his fetters.

The Founding Fathers fought for a government that would respect their rights, not for a government that would allow them to forcibly micromanage the lives of their fellow citizens. The only way to claim that democracy automatically protects liberty is to say that the only freedom that matters is "freedom for the government to rule in the name of the people."

Reconciling Democracy with Liberty

The scope of majority rule should be limited to those issues and areas in which common standards must prevail to preserve public peace. Democracy is a relatively good method for reaching agreement on a system of roads, but is a lousy method for dictating where each citizen must go. Democracy can be a good method for reaching agreement on standards of weights and measurements used in commerce, but is a poor method for dictating wages and prices. Democracy should be a system of government based on common agreement on

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issues that must be agreed upon, and tolerance—however grudging—on all other differences.

"Whenever majority rule is unnecessarily substituted for individual choice, democracy is in conflict with individual freedom," wrote Italian professor Bruno Leoni in his 1961 classic, *Freedom and the Law*.[24] Majority rule is a means not an end. There is nothing superior in majorities running (or thinking they run) a government compared to an individual running his own life. Collective rule will always be inferior to the self-rule of a citizen in his own life.

The fact that democratic governments violate liberty does not prove that democracy is uniquely or inherently evil. This is simply what governments do. In the same way that a political candidate's lies don't create a presumption that his opponent is honest, the fact that democracies routinely violate rights and liberties creates no presumption that other forms of government would not be worse.

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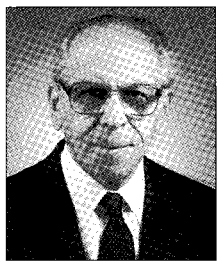
Mental Illness: Sickness or Status?



BY THOMAS SZASZ

Popular belief and scientific dogma notwithstanding, the term "mental illness" refers to unwanted behavior, not medical malady. Specifically, the term refers to the role of "mental patient," a social status imbued with far-reaching legal and political implications. The law assumes that persons called "mental patients" are more likely to be dangerous to themselves and/or others than are persons not so called, an assumption most people accept as self-evident. Herein lies the source of the psychiatrist's traditional social obligation to control "harm to self and/or others," that is, suicide and crime.

We are cast into roles before we come into this world and inexorably after we enter it. We are assigned a name, an age, a gender, and a religion. John Doe, infant, male, Protestant.

As the years pass the roles ascribed to us multiply and form our sense of self, the "I." The child says, "I am John, my brother is Michael, my mother is Mom, my father is Dad, and my dog is Puppy." John is being taught his role, his identity. He is beginning to learn "his place," his part in the plays we call "family," "school," and "society."

From an early age the child is told many other things as well: that he is excitable, or disobedient, or selfish, or clever, or a Mama's boy; or perhaps that he is odd, uncontrollable, bad, and mad. As he hears such messages habitually directed at him, he is likely to become the person the important others tell him he is. Psychologists call this the self-fulfilling prophecy. It is a good term, but it is too narrow. The notion overlooks that the individual cast into a role is not a mannequin whom others are free to dress as they please. The subject cast into a particular role is also an active agent—even as a child, and increasingly as he ages—free (within limits) to submit to and embrace or resist and reject the role into which others seek to cast him.

Being the member of a community, a religion, a nation, a civilization entails joining the cast of a particular national-religious-cultural drama and accepting certain parts of the play as facts, not just props necessary to support the narrative. For example, we in the West today accept as facts that the earth is spherical, that lead is heavier than water, that anemia is a blood disease, and attention deficit hyperactivity disorder is a mental disease. I maintain that while there are mental patients, there are no mental diseases: there are no mental illnesses or madnesses *in* the bodies or minds of the denominated subjects or in nature. Instead, there is the role of madman or mental patient into which a person is cast by his family and society, which he then assumes and plays, or against which he rebels and from which he tries to escape. Occasionally, individuals teach themselves how to be mental patients and assume the role without parental or societal pressure in order to escape unbearably painful situations or the burdens of ordinary life.

Life is full of dangers. Magic and religion are mankind's earliest warning systems. Science arrived on the scene only about 400 years ago, and scientific medicine only 200 years ago. We flatter and deceive ourselves if we believe that we have outgrown the apotropaic use of language (from the Greek *apostropaios,* meaning "to turn away").

Many people derive comfort from magical objects (amulets), and virtually everyone finds reassurance in magical words (incantations). The classic example of an apotropaic is the word "abracadabra," which *The American Heritage Dictionary of the English Language* defines as "a magical charm or incantation having the power to ward off disease or disaster." I submit that we use the phrases "mental illness," "dangerousness to self and others," and "psychiatric treatment" as apotropaics to ward

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off dangers we fear, much as ancient magicians warded off the dangers people feared by means of incantations. Some years ago I suggested that "formerly, when religion was strong and science weak, men mistook magic for medicine; now, when science is strong and religion weak, men mistake medicine for magic." Growing reliance on compulsory mental-health interventions for protection against crime and suicide illustrates the phenomenon.

In 1960, when I first publicly asserted that mental illness is a myth, I meant to remind people that, according to scientific-medical definition, disease is a predicate of bodies. If we accept that definition, we need not examine any particular person to know that he does not have a mental illness. Separating literal from metaphorical diseases is a variation on Kant's theme of separating "analytic truths" from "synthetic truths."

We know that bachelors are unmarried without investigating their marital status. The truth of an analytic proposition is contained in the meaning of the words involved. Analytic truths are "truths of reason," based on logic and the precise use of language. Conversely, we know that lead is heavier than water by reference to appropriate observations or reliable records. The truth of a synthetic proposition is contingent on what we call and accept as "facts." Physicians discover diseases, such as malaria. Psychiatrists construct and deconstruct diseases, such as homosexuality.

We need linguistic methods to verify or falsify analytic statements, empirical methods to verify or falsify synthetic statements. Diseases have causes, such as infectious agents or nutritional deficiencies, and often can be prevented or cured by dealing with these causes. Persons have reasons for their actions, regardless of whether they are said to have or not have mental diseases. It is as foolish to look for the causes or cures of the behaviors we call "mental illnesses" as it would be to look for the causes and cures of the behaviors we call "religions." Action, behavior, conduct, call it what you will, is goal-directed and meaningful. Unless it's "senseless mental illness."

Some years ago I suggested that "formerly, when religion was strong and science weak, men mistook magic for medicine; now, when science is strong and religion weak, men mistake medicine for magic." Growing reliance on compulsory mental-health interventions for protection against crime and suicide illustrates the phenomenon.

On October 6, 2005, the *New York Daily News* reported:

"Depressed banker in Queens rampage." A "perfect gentleman" banker . . . wounded his teenage son and fatally shot himself yesterday during a rampage in their million-dollar Queens home. . . . Mark Low, 61, a Manhattan banker who battled depression, finally fled down the stairs and fired a shotgun into his mouth. . . . "He was depressed—just snapped," another police source said. . . . Police seized four unlicensed guns and several prescription drug bottles—including the anti-depressant Lexapro—in the dad's name from the neat, two-story home on Browvale Lane. Shocked neighbors described the seemingly mild-mannered Mark Low as a caring father and black-belt karate instructor who practiced martial arts in the backyard. . . . "He never raised his voice," [said a neighbor]. "He never had a temper. . . . He was a perfect gentleman. . . . It just doesn't make sense."

Physicians use biological, chemical, and physical tests to diagnose disease. Pathologists demonstrate the anatomical, histological, and physico-chemical lesions of diseases. There are no objective medical tests for mental illnesses, and pathologists have not found lesions pathognomonic of such diseases. When pathologists discover such lesions in patients or cadavers, the lesions are considered evidence of physical disease, not "mental disorder." *Credo quia absurdum est.*

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Most Important

BY VICTOR JACOBSON

The most important people are the farmers, so it is said, for they feed the nation. Laborers, however, are just about as important because they do the real work. On the other hand, were it not for the doctors and for medical science, our life expectancy would be shorter, with less opportunity to enjoy all the other nice things. So we see after all that the doctors are the most important—except for the ministers who are most important because this life is so short and the next one so long.

Let us remember, though, that teachers are the ones who lay the foundation for everything; and unless they do their job well, we won't even get started along any line; we will regress to barbarism. And bear in mind that if it were not for the savers and capitalists, we would still be plowing with a stick and pounding corn in a hollowed stone.

Where would we be if the milkman didn't get up early to serve us and our babies? If our babies were to die, what would we have? So there really is no argument; the milkman is the most important. Of course, we have to have electricity or nearly everything would stop. . . . In case the service is disrupted, one must call the power plant, by telephone. Perhaps phone service is the most important. . . .

The truth is that many different things are most important, each of us having his own idea of their relative importance, depending upon the time and circumstances. Each of us tends to do what seems most important to him at the moment, and this accounts for all human creativity and production. With our creative and productive specialties we come to be important to one another, often in ways which could not be foreseen and which many of us may never clearly understand. This variability in the subjective judgments of the importance of things is the basis of all trade and voluntary cooperation, enabling each productive individual to gain peaceful possession and use of vastly more than he could ever hope to attain strictly on his own.

Conflict and Cooperation

We also know that personal freedom to judge the importance of things can lead to conflict as well as to voluntary cooperation. There are those who think it most important to gain something for nothing, which leads to conflict, making the power of compulsion seem most important. Hence, we tend to rate national defense, the maintenance of internal law and order, and the administration of justice—the force of government—as most important. But the governmental power to suppress private outbursts of violence, thus protecting life and property, is also a power capable of taking the lives and the property of individuals. And in the name of promoting their own special interests, groups often advocate compulsory action detrimental to the peaceful and proper interests of others.

Therein lies the danger of concluding that any one thing is most important—so important that force and compulsion seem justified as a means to that end. Coercive means tend to become ends in themselves, having no logical stopping place until all resistance, all deviation, all competition, all exchange, all initiative, all individuality is suppressed.

When this article was first published in the July 1956 issue of The Freeman, *Victor Jacobson taught English in senior high school at Anoka, Minnesota.*

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The Anatomy of Economic Advice

PART I

BY ISRAEL M. KIRZNER

As is the case with virtually all branches of human knowledge, economic knowledge and understanding are valued not only (or even primarily) for their own sake, but for their *usefulness* in practical terms. The enormous sums expended each year on economic research and economic education certainly would not be forthcoming if it were not expected that such research and education could help promote wise policies leading to prosperity and economic well-being.

Indeed, there can be no doubt that those advocating free-market policies (in *The Freeman* or elsewhere) do so firmly convinced that such advocacy grows naturally out of economic understanding. I certainly share this conviction. Yet the path leading from valid economic understanding to sound economic policy advice is not straightforward. To proceed from an "is" statement to an "ought" statement is, in all contexts, fraught notoriously with philosophical hazards. In the context of economics these dangers are compounded further by the subtleties that complicate the sources of economic understanding itself.

Our attempt to clarify the basis in economic science for valid and useful economic advice will proceed as follows. In the present article we elaborate on the apparent paradox involved in offering "scientific" advice (that is, advice supported or even entailed by science) in the economic arena. In the second article we shall examine the philosophical foundations of economic science itself (with a special interest in its potential in regard to economic policymaking). In the concluding article we will try to draw together our various insights and to formulate our conclusions in regard to the scientific validity of economic advice.

The "Science" and the "Art" of Political Economy: A Nineteenth-Century Dilemma

The founding fathers of economics, including, most prominently, Adam Smith, generally saw their discipline as constituting what came to be called an "art"—that is, a body of advice on how to achieve a well-defined objective—the enhancement of national *wealth*. Although the title of Adam Smith's classic was *An Inquiry into the Nature and Causes of the Wealth of Nations* (suggesting it to be a disinterested scientific inquiry, concerned neither to promote increased national wealth nor to prevent it), Smith himself has usually been seen to have conceived his subject as an art (setting forth ways to increase national wealth).[1] But thoughtful economists of that period had serious misgivings about such an approach.

Some of the classical economists following Smith indeed wrestled with the relation between a science of political economy and an art of political economy. One such economist was Richard Whately, who was not only an economist of note but also an Anglican archbishop. He felt the need to defend himself in regard to his interest in the science of wealth (an interest his critics apparently thought of as unbecoming a clergyman). Whately pointed out (in a 1831 lecture at Oxford) that the conclusions of political economy can be deployed in policies designed to *reduce* wealth (if wealth be seen as morally suspect)—just as they can be used to formulate policies for *increasing* wealth!

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At one stage in his academic career Nassau Senior, one of the most prominent early nineteenth-century political economists, flatly denied the very possibility of such an art.[2] Although Senior later retreated from this categorical position, he was never completely reconciled to the idea of political economy as an art. In his 1860 presidential address to The Section of Economic Science and Statistics (of the British Association), almost a quarter century after his denial of the possibility of an art of political economy, Senior insisted that the political economist is concerned only with the production or distribution of wealth—regardless of whether "wealth be a good or an evil." He clearly believed that, *qua* economist, the economist has no business offering advice. "Whenever he gives a *precept*, whenever he advises his reader to do anything, or to abstain from doing anything, he wanders from science into art. . . ."[3]

As the nineteenth century wore on, Senior's qualms came to be ignored. Particularly on the Continent, economists paid scant heed to Senior's admonitions. The German Historical School (which dominated continental economics during the closing decades of the century) made no attempt whatever to separate their substantive economics from advocacy on behalf of specific social programs. For them it was precisely this advocacy that gave economics its importance as a branch of knowledge. Joseph Schumpeter cited the testimony of a student in a class taught by a prominent leader of the School, to the effect that the mood in the classroom resembled that of an election rally.

It was the great sociologist Max Weber who recognized the danger to the reputation of economics as an objective science that was posed by such a politicized attitude. He maintained that the scientific character of any social science *requires* that it be meticulously impartial as between different judgments of value. This ran counter to the dominant perspective in German economics. At a meeting of German-language social scientists held in 1907, Weber's position was the subject of bitter disagreement. Weber insisted that scientists who disagree sharply on moral priorities should, despite this, be able, at least in principle, to agree on the positive propositions of their discipline. We shall return very soon to comment further on this Weberian doctrine of *wertfreiheit* (freedom from value judgments).[4]

> The founding fathers of economics, including, most prominently, Adam Smith, generally saw their discipline as constituting what came to be called an "art"—that is, a body of advice on how to achieve a well-defined objective—the enhancement of national wealth.

The Twentieth Century: The Economics of Welfare

By the end of the nineteenth century, mainstream economic theorists no longer saw their discipline as concerned with material wealth. Instead they focused on the subjective sense of well-being that human beings hope to derive from their wealth and from their economic activities. This led them (particularly in England) to see economics as primarily concerned with "welfare." Very soon they were speaking of the "economics of welfare" (the new title of A.C. Pigou's 1920 book, itself the second edition of a 1912 book titled *Wealth and Welfare*). To think of economics as the science able to *promote* economic welfare seemed an innocuous small step. Thus for much of the first half of the twentieth century it was taken almost for granted that the economist is the expert who formulates policies to be implemented in order to promote aggregate economic welfare. It seemed to be obvious that economists had the professional duty of advocating policies they believed would, scientifically, enhance social well-being. And even economists squeamish about the philosophical coherency of any notion of aggregate well-being were able to devise more carefully formulated versions of welfare economics by reference to "Pareto optimality" or similar sophisticated constructions.

It was during this period that economists began to find ample employment opportunities in government.

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As the tide of public opinion turned (during the second quarter of the century) decisively in favor of massive government intervention in the market economy, economists increasingly saw their discipline as capable of generating very definite policies for enlightened governments to follow. Economists were placing their science (particularly the branch that made up "welfare economics") at the service of political parties. Inevitably this tended to raise those same gnawing questions concerning the objectivity and impartiality of that science which had so troubled Max Weber. More and more, it seemed, *any* political program, *any* proposal for economic legislation, could find economists prepared to present a "scientific" case in its support.

Mises and *Wertfreiheit*

Ludwig von Mises, the towering Austrian School economist of the twentieth century, was an ardent champion of Weber's *wertfreiheit* principle for all social sciences, and particularly for economics.[5] He believed that the objectivity of the science requires nothing less than its complete detachment from the personal preferences and value judgments of its practitioners. Implicit in Weber's *wertfreiheit* principle is the conviction that it is, at least in principle, *possible* for the economist to pursue his science in detachment from his own personal judgments of value. In fact, however, some twentieth-century philosophers have challenged (and do still challenge) this, maintaining that it is an illusion to believe that one can suppress one's value judgments while engaging in one's science. Inevitably, they argue, one's science reflects one's moral presuppositions. Mises may have agreed that to maintain such detachment may be difficult—but he would have emphatically rejected claims that it is impossible. It is the scientist's obligation to the reputation and integrity of his science, Mises would have insisted, that he insulate his scientific work from any hint of "contamination" arising from personal predilections. The medical researcher exploring the links between cigarette smoking and cancer must pursue his laboratory testing and his statistical analysis without that research being affected in any way by his own preference for smoking or his own fears concerning the disease. So too must the economist's analysis of markets, of regulation, and their consequences be utterly independent of his own moral opinions concerning liberty, the inequality of incomes, or whatever.

> It was the great sociologist Max Weber who recognized the danger for the reputation of economics as an objective science that was posed by such a politicized attitude.

Mises's position offers a fascinating illustration of the ambiguities and complexities involved in the *wertfreiheit* principle. Gunnar Myrdal was a prominent twentieth-century Swedish social scientist. (His positions on economic policy were so utterly at odds with those of Mises, that when, in 1974, Myrdal and F. A. Hayek were joint recipients of the Nobel Prize in economics, it was widely understood that these choices represented a kind of ideological balancing act, with Hayek's approving views on free markets being counterbalanced by Myrdal's advocacy of comprehensive government control of the economy.) In 1930 Myrdal published a German-language book that examined the history of economics and concluded that most of the leading economists during that history had injected political presuppositions and ideals into what they presented as scientific investigations. This book was translated into English in 1955. Fritz Machlup (himself an eminent Austrian-trained twentieth-century economist who had been a pupil of Ludwig von Mises and who treated Mises at a personal level with exemplary loyalty) wrote a review of this published translation. Machlup drew attention to Myrdal's declaration that (unlike the other schools of economic thought) the Austrian School of economics was *not* guilty of injecting political ideals into their scientific work. Machlup found this approving judgment surprising. "How did the anti-interventionist writings of the Austrian von Mises escape Myrdal's attention?" he asked. Apparently Machlup was not able to reconcile Mises's stated insistence on *wertfreiheit* and detachment from ideological pre-commitments with Mises's eloquent writings in favor of laissez faire and the free-market economy.

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In fact a reader of Mises's work cannot fail to sense a paradox surrounding the *passion* with which Mises wrote his economics. By the time we reach the third part of this series, we shall hopefully have resolved this paradox. Here we shall merely identify it and relate it to the broader challenge of extracting useful *advice* from *wertfrei* economic science.

Ludwig von Mises and the Importance of Economics

Mises was, as we have seen, convinced that economics must be pursued dispassionately—as a *wertfrei* discipline—but he wrote with white-hot passion about the dangers that face mankind should it ignore the truths which academic science reveals. He concluded his magnum opus, *Human Action*, with the following searing sentences: "The body of economic knowledge is an essential element in the structure of human civilization; it is the foundation upon which modern industrialism and all the moral, intellectual and therapeutic achievements of the last centuries have been built. It rests with men whether they will make proper use of the rich treasure with which this knowledge provides them or whether they will leave it unused. But if they fail to take the best advantage of it and disregard its teachings and warnings, they will not annul economics; they will stamp out society and the human race."[6]

As the tide of public opinion turned decisively in favor of massive government intervention in the market economy, economists increasingly saw their discipline as capable of generating definite policies for enlightened governments to follow.

It is this passionate conviction on the utter importance of the teachings of economic science that accounts for the attention which Mises paid to the philosophical status of those teachings. Mises believed that the enemies of the free society can maintain their advocacy of central planning and massive government intervention in (or replacement of) the market economy only by ignoring or denigrating economic science. He saw all the attempts to question the validity of the foundational propositions of economics as driven by the ulterior motive of discrediting laissez-faire economic policy. Because Mises believed that only laissez-faire policies can sustain modern civilization, he felt driven to clarify and defend the philosophical foundations of what he called "modern economics." (For Mises, modern economics was the body of economic teachings rooted in the classical economics of Adam Smith and his followers, as refined and reformulated by the so-called neoclassical economists, including especially the founder of the Austrian School, Carl Menger and his followers, among whom was Mises's own teacher, the eminent Eugen von Böhm-Bawerk).

Mises's clarifications of the foundations of neoclassical economic theory included, in particular, his defense of economics from the Marxist charge that conventional economists are merely the lackeys of Wall Street, advocating free markets only in order to serve their capitalist paymasters. Mises saw clearly that, unless economists purged their science of any taint of personal bias (that is, as expressing personal judgments of value), their teachings would be vulnerable to such dismissal. Precisely because he saw free markets as the essential prerequisite for civilized, prosperous society, and because he believed that disinterested economic analysis definitively supported this view, Mises was terrified by the possibility that economic science was to be dismissed as nothing but capitalist propaganda. Fritz Machlup saw Mises's advocacy of laissez faire (his "anti-interventionist" writings) as an example of precisely that departure from impartiality in the pursuit of economic science, for which Myrdal had indicted so many economists (but for which had declared the Austrian School, in general, as having been *not* guilty). We shall return, in the third essay in this mini-series, to examine the validity of Machlup's charge.

Most economists of the postwar period did not pay much attention to these concerns. It is true that Milton Friedman, one of the leading scholars of the eminent Chicago School, advocated (in an influential 1953 essay)

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what he called "positive economics" (in which economic propositions could be established that might command the assent of scholars regardless of their personal predilections). But this came to be viewed primarily as an exercise in methodology, presenting the case for treating economics as a strictly empirical (as opposed to a *logical*) discipline (rather than as a case for *wertfreiheit*).

From time to time more serious attention was devoted to the *wertfreiheit* issue. Thus a leading historian of thought, Terence W. Hutchison (who was, as it happens, a scholar in the methodology of economics who had bitterly criticized Mises's own methodological writings), wrote a book on the subject. But few other economists gave much thought to the dangers to their impartiality (or to their perceived impartiality) that may lurk in their policy pronouncements. And some economists otherwise deeply influenced by the Austrian School, and Mises in particular, expressed strong reservations against the *wertfreiheit* doctrine. Thus Murray Rothbard, a leading disciple of Mises, argued for the explicit articulation of the ethical principles on the part of the economic scientist offering policy advice.

Recently a noted exponent of free-market economic policymaking, Daniel B. Klein, called on economists to deploy their science to modify the political-economic choices of the public.[7] Klein contended that economists who themselves value the free society have a moral *obligation* to help mold public opinion toward an appreciation for liberty. Economists are in a unique position to do this because they enjoy a respected professional reputation. Instead of spending their time talking to each other in the language of abstract mathematical models, economists ought to be engaging in "public discourse," talking to Everyman about issues of practical public policy. Klein surveys a swath of literature in which economists, both advanced scholars and frustrated graduate students, bemoan the irrelevance of the academic work being done by the economics profession. He finds the profession locked into a mindset in which it is in the rational professional interest of the individual economist to *avoid* addressing Everyman on realistic issues, focusing instead on the abstract models upon which professional repute and rewards (perversely) depend. In urging the economist to tell Everyman what is good for him, Klein is clearly urging the economist to see his professional responsibility as extending beyond the strictly positive. The economist must not only—or even primarily—concern himself with the understanding and prediction of chains of economic cause and effect; he must also deploy that understanding to advise (and even to exhort) the man in the street as to what are his best (and worst!) courses of action.

Castigated Economists

In urging the economist to tell the public what economic science sees as good for them, Klein was explicitly rebelling against the position taken by George J. Stigler, the Nobel-laureate Chicago School economist. In 1982 Stigler published a book in which he castigated economists (from Adam Smith to Stigler's own time) for doing precisely what Klein wished them to do (that is, to tell the public what is good for them). Stigler strongly protested against economists being "preachers" (treating the public as mistaken, perverse children whose behavior can be improved if they are properly instructed through appropriate moral suasion).

For Stigler the economist should refrain from "preaching" not because of any concerns that such preaching violates their scientific objectivity and moral neutrality. Rather Stigler denounced such preaching because to preach economic policy is to believe—quite mistakenly, in Stigler's opinion—that the economist knows what is economically good for the public better than the public itself knows. Stigler carries the assumption of perfect knowledge (which has notoriously characterized many of the models constructed by economic theorists in order to account for real-world facts) to a consistent, but extreme, degree. He assumes, in effect, that all that economics might be able to teach is *already known* to the public and to its political agents. The economist may think the outcome to be expected from a given policy to be undesirable, but if the public adopts that policy this proves that the public in fact *desires* that very outcome. The economist who denounces that policy as "wrong" is simply revealing that he has a set of objectives different from those that are in fact being pursued by the public.

Certainly the history of economics reveals little unanimity among economists concerning the possibility and the usefulness of the *wertfreiheit* principle. The prestige

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associated with the teachings of economic science, and the importance that educated public opinion attaches to them, have waxed and waned during that history. The views of economists themselves as to whether or not they have an obligation to enlighten the public on economic policy have varied widely. It is against this rather confusing background that we shall try to clarify the legitimacy of ("scientific") *advice* to the public by economists.

From "Is" to "Ought"

In the second of this series we shall review the foundations of the strictly positive lessons taught by economic science. That is, we shall briefly set forth the nature of the economic reasoning that establishes the existence of chains of cause and effect in the economic sphere. In this regard we shall follow the Austrian tradition in economic reasoning, particularly as developed in the relevant writings of the twentieth-century leaders of that tradition, Mises and F.A. Hayek. What will emerge from this examination is insight into the powerful market tendency to systematically translate consumers' rankings of needs, and physical resource constraints, into corresponding patterns of resource allocation. This systematic translation, we shall see, follows from the purposefulness of human action, the entrepreneurial propensity of human beings to discover what is of interest to them, and from the information-communicating capabilities of the market price system. This will lead us directly to the third and final part of this series.

In that third article we shall examine what implications this Austrian perspective holds for the possibility of offering impartial advice on public-policy issues, such that the advice does *not* reflect any personal or ideological preferences of the economist offering it. Only if this possibility exists can the doctrine of *wertfreiheit* be upheld consistently by the policy adviser; only if this possibility exists can the objectivity and impartiality of the advising economists be preserved; only if this possibility exists can we hope to uphold the scientific repute of economics. Our conclusions in regard to these questions will enable us to clarify some of the paradoxes we have encountered in the present article. They will provide us, in particular, with an understanding of how the teachings of free-market economists need not compromise their objectivity and impartiality, and may, nonetheless, be presented with passionate conviction and dedicated advocacy.

1. See for example J.N. Keynes, *The Scope and Method of Political Economy* (1st ed., 1891) 4th ed. (London, 1930), p. 39n.
2. On this see Marian Bowley, *Nassau Senior and Classical Economics* (London: George Allen and Unwin, 1937), p. 54.
3. See the text of this presidential address in R.L. Smyth, ed., *Essays in Economic Method* (London: Duckworth, 1962), p. 21.
4. For a more detailed discussion of the *wertfreiheit* principle, see Israel M. Kirzner, "Value Freedom," in Peter J. Boettke, ed., *The Elgar Companion to Austrian Economics* (Aldershot: Edward Elgar, 1994), pp. 313–19.
5. See Ludwig von Mises, *Human Action*, 3d ed. (Chicago: Contemporary Books, 1966), pp. 881–85.
6. Ibid., p. 885.
7. Daniel B. Klein, *A Plea to Economists Who Favour Liberty: Assist the Everyman* (London: Institute of Economic Affairs, 2001).

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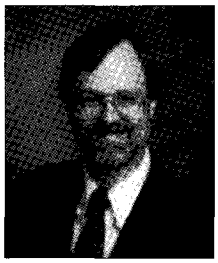

Our Presidents and the National Debt

BY BURTON W. FOLSOM, JR.

During the last 75 years the United States has failed to balance its annual budget over 90 percent of the time. What's worse, the government has spent money so recklessly that we now owe over $8.2 trillion, and Congress recently raised the debt ceiling to $9 trillion.

Such a trend is ominous because a country's national debt is a mirror of its economic future and its national character as well. With our piles of IOUs, we borrow from the future to indulge the present. If we study our national debt, we can discover some generalizations that help us understand how our presidents and our national character have changed over time.

1. Our first presidents took the national debt seriously and handled it with courage and integrity.

Our nation began with dangerous financial liabilities. When we fought the Revolutionary War we borrowed over $75 million in cash and supplies from individual patriots, from all 13 colonies, and from France and Holland. Our Founders, led by President George Washington and his treasury secretary, Alexander Hamilton, were determined to establish the U.S. credit by passing a tariff and a whiskey tax that would generate the revenue to help retire our war debt.

Washington, in his Farewell Address, described public credit as "a very important source of strength and security." He recommended that we "use it as sparingly as possible, avoiding occasions of expense by cultivating peace. . . ." Avoid "the accumulation of debt. . . ," Washington urged, "by vigorous exertions in time of peace to discharge the debts which unavoidable wars have occasioned, not ungenerously throwing upon posterity the burthen which we ourselves ought to bear." Not only did Washington wage the war, serve as president, and help establish our institutions of liberty, but he urged his generation to pay off the national debt as well.

Our first seven presidents were committed to Washington's goal. They chipped away so steadily at the national debt that James Madison, one of those presidents and the "Father of the Constitution," lived to see the entire debt eradicated. In fact, by his death in 1836, the United States had actually begun running a surplus.

How to handle the national surplus became a political issue that President Andrew Jackson had to address. "It appears to me," Jackson said, "that the most safe, just, and federal disposition which could be made of the surplus revenue, would be its apportionment among the several states according to their ratio of representation."

When Jackson's suggestion became law, the effect was immediate and nationwide. The residents of the Michigan Territory, for example, frantically clamored for statehood so that they would be eligible to scoop up some of the overflow from the federal treasury. Washington's dream of a creditworthy nation had become a reality.

2. Wars have spiked the national debt.

The national debt has not increased slowly; instead, it has increased sharply during major wars, starting with the Civil War. The earlier wars—the Revolutionary War, the War of 1812, and the Mexican War—all created small jumps in the national debt, but the presidents who followed them all whittled down those debts quickly. In the Civil War, however, the national debt skyrocketed from $60 million to $2.7 billion—more than a 45-fold increase, which is the greatest proportional leap of any war in U.S. history.

Interestingly, in the 50 years after the Civil War, from 1866 to 1916, the presidents were committed to restoring American credit, and the national debt was slashed from $2.7 billion to $1.2 billion. But World War I sent the debt spiraling again, this time to $24 billion by 1920.

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World War II added another digit to the nation's debt, which leaped from $43 billion to $259 billion from 1940 to 1945.

Those war debts have had a strong impact on U.S. tax policy. The income tax was introduced in America during the Civil War, but it was removed shortly after the war in 1872. After the Sixteenth Amendment was passed in 1913, the new income tax had a top marginal rate of 7 percent. But five years later, in the midst of World War I, the top rate was hiked to 77 percent. It was lowered in the 1920s, but during World War II the marginal tax rate jumped to 90 percent. President Franklin Roosevelt also introduced the idea of withholding income (proposed by a Treasury staff that included a young Milton Friedman) and forcing the employers to do the paperwork.

3. Most presidents have run surpluses, not deficits.

In fact, from 1791 to 1931, we had annual surpluses over 70 percent of the years. After the Civil War, for example, we ran surpluses for 28 straight years. Oddly, those presidents who obtained the most dramatic surpluses have often been those most condemned in the leading presidential polls. In Arthur Schlesinger's 1962 poll, four of the bottom five presidents—Coolidge, Pierce, Grant, and Harding—secured budget surpluses in each of their 20 total years as presidents. Under Franklin Pierce, for example, the entire national debt was cut almost in half. Under Harding and Coolidge, the national debt was almost slashed by one-third.

On the other hand, Lincoln, Wilson, and Franklin Roosevelt, whom Schlesinger's historians ranked among the top four presidents, broke all records for budget deficits. It is astonishing but true that these three presidents incurred more debt in their administrations than the entire national debt of $259 billion in 1945. In other words, of the first 32 presidents, under 29 of them we had a budget surplus of $4 billion; under Lincoln, Wilson, and Roosevelt we had a budget deficit of $263 billion.

Granted, they were war presidents, but that is a key point. Yet Washington had fought a major war, and as president he wanted to pay off the debt from that war in his generation. Lincoln, Wilson, and Roosevelt did not do that and do not seem to have had any ambition to do so.

Modern presidents, those who have served since the 1962 poll, are eager to secure their place in history. They may realize that fame and adulation are no longer given to those who "use [public credit] as sparingly as possible." Perhaps the slogan of the modern presidents could be, "It is better to have spent and lost than never to have spent at all."

4. Regardless of war or political party, modern presidents have tended to double the national debt about every nine years.

Even as late as post-World War II (1945–1960) the national debt increased at less than 1 percent per year. But since the Kennedy era and the Schlesinger poll, we have had four Democratic and five Republican presidents. Under these nine men, the national debt has doubled almost five times, from $289 billion in 1961 to a newly proposed ceiling of $9 trillion. Whether the issue has been hurricanes, farm subsidies, or medical care (none of which is a subject for federal aid, according to the Constitution), all these presidents have spent first and asked questions later.

Should that pattern of doubling the national debt every nine years continue—and there are very few politicians who wish to stop it—our debt by the end of the 21st century will increase to about $9 quadrillion, or (even if the U. S. population triples) about $10 million per person.

In discussing public debt, Washington said that congressmen needed to bear responsibility for retiring the debt, and "that public opinion should cooperate" as well. Will we heed the advice of this thrifty president and demand accountability from our elected officials?

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Wartime Executive Power: Are Warrantless Wiretaps Legal?

BY ROBERT A. LEVY

President Bush has authorized the National Security Agency (NSA) to eavesdrop, without obtaining a warrant, on telephone calls, e-mails, and other communications between U.S. persons in the United States and persons outside the United States. For understandable reasons, the operational details of the NSA program are secret, as are the details of the executive order that authorized the program. But Attorney General Alberto Gonzales has stated that surveillance can be triggered if an executive-branch official has reasonable grounds to believe that a communication involves a person "affiliated with al-Qaeda or part of an organization or group that is supportive of al-Qaeda."

The attorney general has declared that the President's authority rests on the post-9/11 Authorization for Use of Military Force (AUMF) and the president's inherent wartime powers under Article II of the U.S. Constitution, which includes authority to gather "signals intelligence" on the enemy.

My conclusions, as elaborated below, are: First, the president has some latitude under the "Executive Power" and "Commander-in-Chief" Clauses of Article II, even lacking explicit congressional approval, to authorize NSA warrantless surveillance without violating Fourth Amendment protections against "unreasonable" searches. But second, if Congress has expressly prohibited such surveillance (as it has under FISA, the Foreign Intelligence Surveillance Act), then the statute binds the president unless there are grounds to conclude that the statute does not apply. Third, in the case at hand, there are no grounds for such a conclusion—that is, neither the AUMF nor the president's inherent powers trump the express prohibition in the FISA statute.

In this article, I address only the legality of the NSA program, not the policy question whether the program is necessary and effective from a national-security perspective. If the program is both essential and illegal, then the obvious choices are to change the program so that it complies with the law, or change the law so that it authorizes the program.

Does NSA Warrantless Surveillance Violate the Fourth Amendment?

The President has contended that NSA warrantless surveillance does not offend Fourth Amendment requirements that all searches be reasonable. That contention is correct as far as it goes; but it does not go far enough.

To begin, the Fourth Amendment requires probable cause in order to obtain a warrant, but it does not require a warrant for all searches. There are numerous instances of permissible warrantless searches—for example, hot pursuit, evanescent evidence, search incident to arrest, stop and frisk, automobile searches, plain-view searches, consent searches, and administrative searches. In fact, federal courts have recognized a border-search exception and, within that exception, a narrow exception for monitoring certain international postal mail. As for a national-security exception, that remains an open issue. In *United States v. United States District Court* (1972), known as the *Keith* case, the court said there would be no exception if a domestic organization were involved; but there might be an exception if a foreign power were involved.

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Thus the administration can credibly argue that it may conduct some types of warrantless surveillance without violating the Fourth Amendment. And because the president's Article II powers are elevated during time of war—assuming the AUMF to be the functional, if not legal, equivalent of a declaration of war—his post-9/11 authorization of NSA warrantless surveillance might be justifiable if Congress had not expressly disapproved.

But Congress *did* expressly disapprove, in the FISA statute. Therefore, the President's assertion of a national-security exception that encompasses the NSA program misses the point. The proper question is not whether the president has inherent authority to relax the "reasonableness" standard of the Fourth Amendment. The answer to that question is: yes, in some cases. But the narrower issue in the NSA case is whether the president, *in the face of an express statutory prohibition*, can direct that same surveillance. The answer is no, and I am not aware of any case law to support an argument to the contrary.

But the narrower issue in the NSA case is whether the president, in the face of an express statutory prohibition, can direct that same surveillance. The answer is no.

Put somewhat differently, Article II establishes that the president has inherent powers, especially during wartime. And those powers might be sufficient to support his authorization of warrantless surveillance, notwithstanding the provisions of the Fourth Amendment. But Article II does not delineate the *scope* of the president's wartime powers. And because Congress has concurrent authority in this area, an express prohibition by Congress is persuasive when deciding whether the president has overreached.

The distinction between concurrent and exclusive powers is important. For example, the president's "Power to grant . . . Pardons" is exclusive; there is no stated power for Congress to modify it by legislation—for example, by declaring certain offenses unpardonable. By contrast, the president's wartime powers are shared with Congress, which is constitutionally authorized to "define and punish . . . Offenses against the Law of Nations," "declare War," "make Rules concerning Captures on Land and Water," "raise and support Armies," "provide and maintain a Navy," "make Rules for the Government and Regulation of the land and naval forces," and suspend habeas corpus. That suggests the president must comply with duly enacted statutes unless he can show that Congress has exceeded its authority. In this instance, President Bush has made no such showing.

Does NSA Warrantless Surveillance Comply with FISA?

Accordingly, even if the administration establishes that NSA warrantless surveillance during wartime is reasonable in the context of the Fourth Amendment, the question remains whether the NSA program violates the express terms of FISA. It does.

The text of FISA is unambiguous: "A person is guilty of an offense if he intentionally engages in electronic surveillance . . . except as authorized by statute." That provision covers communications from or to U.S. citizens or permanent resident aliens in the United States. Moreover, the Wiretap Act provides that its procedures and FISA "shall be the exclusive means by which electronic surveillance . . . may be conducted."

To be sure, the FISA statute was drafted to deal with peacetime intelligence. But that does not mean the statute can be ignored when applied to the post-9/11 war on terror. In passing FISA, Congress expressly contemplated warrantless surveillance during wartime, but limited it to the first 15 days after war is declared. The statute reads: "[T]he President, through the Attorney General, may authorize electronic surveillance without a court order under this title to acquire foreign intelligence information for a period not to exceed fifteen calendar days following a declaration of war." Equally important, FISA warrant requirements and electronic surveillance provisions were amended by the USA PATRIOT Act, which was passed in response to 9/11 and signed by President Bush. If 9/11 triggered "wartime," as the administration has repeatedly and convincingly argued, then the amended FISA is clearly a wartime statute.

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Moreover, the Justice Department, in a December 2005 letter to Congress, acknowledged that the president's October 2001 NSA eavesdropping order did not comply with the "procedures" of the FISA statute. The Department offered two justifications—the first of which I examine next.

Does the AUMF Authorize Warrantless Surveillance by the NSA?

The Justice Department asserts that Congress's post-9/11 AUMF provides the statutory authorization that FISA requires. Under the AUMF, "the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons" that may have been connected to 9/11. But that cannot sensibly mean the AUMF authorizes warrantless surveillance by the NSA in the face of an express provision in FISA that limits such surveillance to the first 15 days after a declaration of war.

A settled canon of statutory interpretation directs that specific provisions in a statute supersede general provisions. When FISA forbids "electronic surveillance without a court order" while the AUMF permits "necessary and appropriate force," it is bizarre to conclude that electronic surveillance without a court order is authorized. In voting for the AUMF, members of Congress surely did not intend to make compliance with FISA optional. In fact, Congress was simultaneously relaxing selected provisions of FISA via the PATRIOT Act. Here's how the *Washington Post* put it in a December 2005 editorial: "Clearheaded members of Congress voting for the [AUMF] certainly understood themselves to be authorizing the capture of al-Qaeda and Taliban fighters. We doubt any members even dreamed they were changing domestic wiretapping rules—particularly because they were focused on that very issue in passing the USA PATRIOT Act."

Also in the *Washington Post*, December 2005, former Senate minority leader Tom Daschle (D-SD) wrote that Congress rejected proposed language from the White House that the broader purpose of the AUMF was to "deter and pre-empt any future acts of terrorism or aggression." And Congress also refused a last-minute administration proposal to change "appropriate force against those nations" to read "appropriate force *in the United States* and against those nations." Notably, not one of the 518 members of Congress who voted for the AUMF has now come forth to dispute Sen. Daschle's account, or claim that his or her vote was intended to approve NSA warrantless surveillance.

Still, proponents of the NSA surveillance program argue that the AUMF surely covers the gathering of battlefield intelligence, and the events of 9/11 have expanded the concept of a "battlefield" to include places in the United States. That assertion is mistaken for three principal reasons:

First, communications from the actual battlefield—for example, Afghanistan—or from anywhere else outside the United States, can be monitored without violating FISA as long as the target of the surveillance is not a U.S. person in the United States.

Second, a call from, say, France or the United Kingdom cannot be construed as battlefield-related unless the term battlefield has no geographic limits. The courts have rejected that idea in comparing the arrests of two U.S. citizens, Yaser Hamdi and Jose Padilla. In *Hamdi v. Rumsfeld* (2003), federal appellate Judge J. Harvie Wilkinson pointedly noted that Hamdi's battlefield capture was like "apples and oranges" compared to Padilla's arrest in Chicago. And in *Padilla v. Rumsfeld* (2004), the U.S. Court of Appeals for the Second Circuit rejected the argument that all the world is a battlefield in the war on terror.

Third, if Naples, Italy, is part of the battlefield, why not Naples, Florida? The same logic that argues for warrantless surveillance of foreign-to-domestic and domestic-to-foreign communications would permit warrantless surveillance of all-domestic communications as well. In fact, the administration, responding in March 2006 to questions from Congress, refused to rule out the existence of an all-domestic surveillance program. If there is such a program, it may take another leak in the *New York Times* before Americans find out.

As law professor Richard Epstein noted in a posting on opinionduel.com: A current battlefield, where there is armed combat, is vastly different from a potential battlefield that could erupt if the enemy were to launch a terrorist act. To argue that we are living in a "war zone" would be news to most Americans jogging in Central Park or watching television in Los Angeles. There is, after

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all, a distinction to be made between suburban Chicago and suburban Baghdad. Nor did the events of 9/11 transform the United States into a battlefield in the Afghan war—any more than did the attack on Pearl Harbor or the invasion by eight Nazis in the *Ex parte Quirin* case (1942) transform the United States into a World War II battlefield.

Do the President's Inherent War Powers Allow Him to Ignore FISA?

Attorney General Gonzales has a second, more plausible, defense of warrantless surveillance—namely, Article II of the Constitution states that "The executive Power shall be vested in a President" who "shall be Commander in Chief" of the armed forces. That power, says the attorney general, trumps any contrary statute during time of war.

I respectfully disagree—which is *not* to say I believe the president is powerless to order warrantless wartime surveillance. For example, intercepting enemy communications on the battlefield is clearly an incident of his war power. But warrantless surveillance of Americans inside the United States, who may have nothing to do with al-Qaeda, does not qualify as incidental wartime authority. The president's war powers are broad, but not boundless. Indeed, the war powers of Congress, not the president, are those that are constitutionalized with greater specificity.

The question is not whether the president has unilateral executive authority, but rather the extent of that authority. And the key Supreme Court opinion that provides a framework for resolving that question is Justice Robert Jackson's concurrence in *Youngstown Sheet & Tube v. Sawyer*—the 1952 case denying President Truman's authority to seize the steel mills.

Justice Jackson offered the following analysis: First, when the president acts pursuant to an express or implied authorization from Congress, "his authority is at its maximum." Second, when the president acts in the absence of either a congressional grant or denial of authority, "there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain." But third, where the president takes measures incompatible with the express or implied will of Congress—such as the NSA program, which violates an express provision of the FISA statute—"his power is at its lowest."

The NSA program does not fit in *Youngstown*'s second category (congressional silence). It belongs in the third category, in which the President has acted in the face of an express statutory prohibition.

Moreover, unilateral authorization of the NSA program by the executive branch suggests that unilateral actions in other areas would be proper. For example: If warrantless domestic surveillance is incidental to the president's inherent powers, so too are sneak-and-peek searches, roving wiretaps, library records searches, and national-security letters—all of which were vigorously debated in deciding whether to reauthorize the PATRIOT Act. Could the president have proceeded with those activities even if they were not authorized by Congress? If so, what was the purpose of the debate? Why do we even need a PATRIOT Act?

Further, the attorney general asserts that the AUMF and the commander-in-chief power are sufficient to justify the NSA program. He, or his predecessor, made similar claims for military tribunals without congressional authorization, secret CIA prisons, indefinite detention of U.S. citizens, enemy-combatant declarations without hearings as required by the Geneva Conventions, and interrogation techniques that may have violated our treaty commitments banning torture. Is any of those activities outside the president's commander-in-chief and AUMF powers? If not, what are the bounds, if any, that constrain the president's unilateral wartime authority?

What Should Be Done to Remedy Unlawful Acts by the Executive Branch?

Having concluded that NSA's warrantless surveillance program is illegal, let me comment briefly on remedial steps.

At the outset, I reject the proposition that the president, but for his ability to order warrantless domestic surveillance, would be impotent in the war on terror. First, he has expansive power to conduct surveillance outside the United States. Second, the PATRIOT Act and other statutes have given him broad leeway within the United States. Third, he has considerable, although not plenary, inherent wartime authority when Congress

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has approved, and even perhaps when Congress has been silent. But when Congress exercises its own powers and expressly prohibits what the president would like to undertake, the president's power is limited.

Yet, even then, if it's necessary and desirable to monitor the communication of a U.S. person in the United States, then the president could, and should, have sought a FISA warrant. The requirement to obtain a warrant from the FISA court is probable cause that someone may be "an agent of a foreign power," which includes international terrorist groups. That standard is far below the usual criminal-law requirement for probable cause that a crime has been, or is about to be, committed. Almost all FISA requests are granted, and emergency approval for wiretaps can be handled within hours. In fact, the FISA statute allows the government in emergency situations to put a wiretap in place immediately, then seek court approval later, within 72 hours.

Attorney General Gonzales has declared that 72 hours are not enough; it takes longer than that to prepare a warrant application. That is tantamount to arguing that the Justice Department lacks sufficient personnel to handle its workload, so it's compelled to act illegally to circumvent prescribed procedures. Moreover, the administration has not, to my knowledge, complained about the same 72-hour window that governs domestic-to-domestic communications under FISA. Why is the window too short only when the party on the other end happens to be outside the United States? Indeed, the window was increased from 24 to 72 hours in the Intelligence Authorization Act of 2002. If the longer period is still inadequate, why hasn't the administration requested another extension from Congress?

Finally, if the President thought the law should be amended to authorize warrantless domestic surveillance, he had a convenient vehicle for that purpose shortly after 9/11. That's when the PATRIOT Act was passed, substantially enhancing the president's authority under FISA and expanding his ability to conduct foreign intelligence surveillance. The President could have, but did not, seek new authority for the NSA—authority that he has now decreed, unilaterally, without input from either Congress or the courts.

The administration may be justified in taking measures that in pre-9/11 times could be seen as infringements of civil liberties. After all, the fuzzy text of the Fourth Amendment (unreasonable searches) and the Fifth Amendment (due process) leaves room for exceptions at the margin. But the executive branch cannot, in the face of an express prohibition by Congress, unilaterally set the rules, execute the rules, and eliminate oversight by the other branches.

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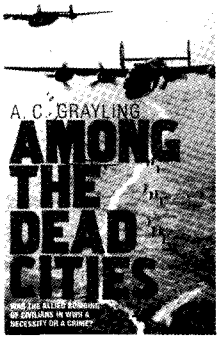
Book Reviews

Among the Dead Cities: The History and Moral Legacy of the WW II Bombing of Civilians in Germany and Japan

by A. C. Grayling

Walker • 2006 • 361 pages • $25.95

Reviewed by Richard M. Ebeling



War is always a violent and brutal affair. Its very purpose is to defeat "the enemy." But a central question is: who is the enemy? Before the French Revolution, the monarchies of Europe often attempted to follow certain "rules of war" that could be expected of gentlemen and members of the aristocracy. But this changed with the new ideology of the French revolutionaries. The "nation" and "the people" were viewed as one, and the government represented the will of both. All were expected to serve the state in time of war, since each individual was considered inseparable from the declared interests of the nation to which he belonged.

In the second half of the nineteenth century there were several attempts to distinguish the civilian from the military. A number of international conventions were held among the leading nations of Europe and North America to codify a new set of rules of warfare. Those rules were meant to specify the treatment not only of prisoners of war, but also of civilians and noncombatants in battle and under occupation.

Those attempts reflected the classical-liberal spirit of the time, which recognized that human beings are not the property of the state. Rather, each individual has an inherent right to his own life, liberty, and property, which even war should not trample on except under extreme wartime necessity. The lives and property of noncombatants were to be respected and left untouched. The weapons of war should be applied only against the opposing army. Certain types of warfare that could be indiscriminate in its effect should be banned—for example, the dropping of bombs from balloons. Whenever possible, monuments, museums, and other national treasures should not be targeted.

Of course, governments never fully followed those rules, even in that golden age of classical liberalism before 1914. And it was certainly never practiced in conflicts between the European powers and the colonial peoples they conquered in Africa and Asia. Nonetheless, it was an ideal that in principle those governments and their representatives claimed to believe in and tried at times to follow.

This changed with the two World Wars of the twentieth century. With the rise of collectivism there came the age of Total War. The state claimed power and jurisdiction over everything under its political control. The very notion of "civilian" and "noncombatant" basically disappeared from the lexicon of politics and warfare. Certainly the totalitarian regimes in Soviet Russia, fascist Italy, and Nazi Germany nationalized their own citizens and viewed all those in enemy countries as fair game.

Slowly but surely the same process happened in Great Britain and the United States, and came to be reflected in their wartime conduct in World War II. A. C. Grayling analyzes one aspect of this process, the Allied bombing strategies against Germany and Japan, in his recent book, *Among the Dead Cities*.

Germany's aerial bombings and destruction of Warsaw and Rotterdam during the first year of the war were roundly condemned by the British and many other governments around the world. But after the fall of France in June 1940 and the Battle of Britain in the summer and autumn of that year, during which the Germans bombed London, Coventry, and other cities in England, British strategy changed.

Wanting to take the war to "the enemy" and devise a way to fight the Germans when clearly the British had no way to undertake an invasion of the continent, the "new thinking" was that the German will to fight could be undermined through carpet bombing of cities and civilian areas. Part of the reason for this approach was that the British had no way of undertaking pinpoint bombing of military targets. To hit any of these required targeting a larger area in which those military and industrial installations might be located.

By 1943 the British had an air force large enough to

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begin full-scale destruction of hundreds of German cities. Hamburg, Berlin, and Dresden were only three of the most ruined cities throughout Germany. By the end of the war, somewhere between 300,000 and 500,000 Germans had been killed from bombings, with another 780,000 wounded.

The bombings did not destroy the will of the German civilian population to fight. Indeed, it merely reinforced their anger and opposition to the Allies, just as German bombings of English cities only strengthened the resolve of the British to fight the Germans earlier in the war. Its only result was to kill unarmed men, women, and children, and destroy centuries-old architectural and artistic achievements.

In the European theater American bombing strategy focused on military-related targets to undermine the German ability to fight—armaments factories, oil fields and refineries, port and railway facilities. But in the Pacific war, American strategy came to be the destruction of Japan.

Japanese military casualties for the entire war have been estimated at 780,000. But over 800,000 civilians were either killed or wounded during American fire bombings of Japanese cities, with the greatest intensity of these attacks coming in the last few months of the war. Over 85,000 people were killed in the fire bombing of Tokyo on the night of March 9–10, 1945. Half the built-up areas in 66 Japanese cities were destroyed. The two atomic-bomb attacks on Hiroshima and Nagasaki in August 1945 killed 100,000 civilians.

Grayling, in his very detailed and dispassionate analysis tries to explain the rationales for civilian-focused area bombings of German and Japanese cities. These included undermining the German people's will to fight, the destruction of Germany's ability to wage war, and the diverting of German military personnel and equipment from the frontlines to German cities to protect them from aerial attack.

But what he shows, based on Allied studies after the war, was that targeting cities and civilian populations failed to achieve virtually any of those goals. The more focused American bombing of military targets in the European theater was far more effective in weakening the German ability and resolve to fight.

But what Grayling really wants us to ponder is whether countries dedicated to freedom can reconcile that ideal with the use of indiscriminate and unrestrained methods of warfare. Even if "the enemy" uses cruel and barbaric methods to fight us, should we not impose on ourselves a higher standard of conduct, rather than to sink to the level and the methods of those we oppose?

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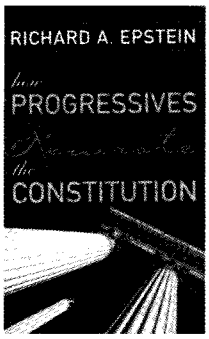
How Progressives Rewrote the Constitution

by Richard A. Epstein
Cato Institute • 2006 • 137 pages • $15.95

Reviewed by George C. Leef



University of Chicago law professor Richard Epstein has for several decades been one of America's foremost exponents of liberalism—in the old sense of that word. A scholar whose knowledge of the Constitution, understanding of economics, and grasp of the virtues of a free society are almost unparalleled, Epstein brings his remarkable erudition to bear here on a matter that is central to most of our current socio-economic troubles—the demolition of the constitutional restraints on governmental power. While the book is short, it bores in relentlessly to expose the errors of the Progressive mindset and explicate the Supreme Court cases that have done so much to burden us with our highly authoritarian state.

The dramatis personae of the book aren't so much individual justices (although we do learn quite a lot about Brandeis, Frankfurter, and others who helped in the rewriting project) as they are two contrasting legal mindsets. On the one hand we have the philosophy of the "Old Court"—a jurisprudence that was generally favorable to individual liberty, private property, and freedom of contract. It held sway from roughly the 1890s until the mid-1930s and kept proposals for coercive social engineering largely in check. On the other hand, we have the "Progressive" philosophy, which rejected the laissez-faire approach of true liberalism in favor of a vast expansion of government power to reshape society, making it supposedly more fair and equal.

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Looking to legislatures to accomplish those goals, Progressive jurists adopted a stance of extreme deference toward them by giving various clauses of the Constitution "expansive" readings that, Epstein argues, certainly did not comport with the intentions of the Founders. So insistent were the Progressives on allowing government to act in any way that might advance their agenda that they were willing to permit infringements on what would now be regarded as sacred "civil" liberties. Justice Frankfurter, Epstein writes, "was prepared to stifle even meritorious claims of liberty to support his overarching program for the major economic issues of the day."

For example, in *Minersville School District*, Frankfurter and his allies upheld the power of the state to compel members of the Jehovah's Witness religion to pledge allegiance to the flag despite their contrary beliefs. Frankfurter's central argument was that "the ultimate foundation of a free society is the binding tie of cohesive sentiment." If that's true, then a horrifying array of government enactments is constitutionally permissible.

The Progressives most famously rewrote the Constitution to suit their liking with respect to economic liberties and property rights. Where the Old Court had generally upheld economic liberties and property rights against government encroachment, the Progressives were at best indifferent if not hostile toward those concepts, as they collided with their vision of a highly regulated, egalitarian society. With glee they abandoned precedents such as *Lochner v. New York* (invalidating maximum-hours-of-work legislation) and *Adair v. U.S.* (invalidating mandatory collective bargaining) to clear the path for government control. Those rewritings, Epstein demonstrates, were premised on the belief that an economy rooted in "outmoded" laissez-faire concepts was atavistic and unfair to the poor. He then drives a stake through the heart of that position by citing statistics on wages and hours. Prior to the Progressive ascendancy, real wages had been steadily rising while average hours of work declined. The old socioeconomic system the Progressives dethroned worked far better than the state-controlled one they desired.

Throughout the book Epstein writes in a lucid, professorial manner, but sometimes his passionate dislike of authoritarianism shows clearly through. That is especially true in his discussion of the Supreme Court's recent *Kelo* decision, upholding seizure of a woman's house because redevelopment might enhance tax collections. Epstein writes, "The crushing defeat in *Kelo* is a disaster for the ordinary people who now stand to be thrown unceremoniously out of their homes. But, more than any academic writing could, it may expose the dangerous side of the big-government position that is the hallmark of Progressive thought." That's right—the Progressive revolution is still with us, some 70 years after its initial triumphs.

Epstein's case against Progressivism is overpowering. But isn't it quixotic to launch an attack against so strong a redoubt? He answers that at least some of the constitutional errors of the Progressives could be overturned, writing, "[A]cceptance of change should never be confused with the mistaken belief that long usage renders it necessarily immune from rational criticism and constitutional change; for if that were the case, then the doctrine of 'separate-but-equal' announced in 1896 in *Plessy v. Ferguson* would have been affirmed, not overturned 58 years later in *Brown v. Board of Education*." True.

Richard Epstein is laying both a constitutional and factual foundation for an eventual about-face on the Progressive rewriting of the Constitution. If that happy day ever comes, his work will undoubtedly be a guiding light.

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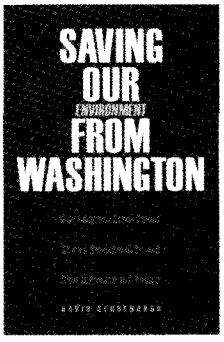
Saving Our Environment from Washington

by David Schoenbrod

Yale University Press • 2005 • 320 pages • $28

Reviewed by Jane S. Shaw



In recent years several environmental activists have revealed dramatic changes in their views about environmental issues. Patrick Moore confronted hostile ships and governments as he sailed the seas in the *Rainbow Warrior* as a founder of Greenpeace, but today he charges his former colleagues with "ever-

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increasing extremism." Bjørn Lomborg, a college instructor and Greenpeace member, once assumed that apocalyptic environmental predictions were correct, but after he studied the facts he concluded that "things are getting better." Now David Schoenbrod, formerly an attorney with the litigious environmental group Natural Resources Defense Council (NRDC), explains how his ideas about environmental regulation depart from what they were when he was (in his words) a "proper liberal" and moved in "elite environmental circles."

Schoenbrod's metamorphosis has been going on for about a quarter of a century. As an environmental litigator with NRDC, his goal was to pressure the Environmental Protection Agency (EPA) to force polluters to clean up. Today, he takes a different view, which can be summed up with two statements. One is that pollution control should be a state and local, rather than national, issue. The second is that legislative bodies (such as Congress) should make the rules and regulations about pollution, rather than leave them up to bureaucratic agencies such as the EPA.

First, Schoenbrod sees the issue as a constitutional one. He argues that Congress should only regulate interstate pollution, and he points out that most pollution is local. Where national rules are appropriate, he argues that Congress, not the EPA, should be making them. Yet EPA's reams of regulations developed outside the legislative process amount to laws. "When I became an environmental advocate," he writes, "I regarded questions about the constitutionality of the EPA's power as the last refuge of polluters, and I litigated accordingly. . . . Experience has since taught me that those constitutional ideals are the safest road to the public interest, including the public's deeply felt interest in a clean earth."

Although this book is Schoenbrod's third in dealing with the role of government, it is the first in which he shares his personal experiences as his ideas changed. He writes in a conversational way to make the book appealing to the nonspecialist.

The result is something of an odd mixture. Some engrossing chapters recount the situations that led him to become less elitist and more realistic. Other chapters are more abstract or technical, sometimes discussing a particular environmental issue, such as the dangers of pesticides, and sometimes discussing constitutional history. Some are downright "wonkish."

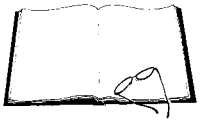
On the personal side we learn that buying an abandoned farm in upstate New York in the mid-1970s caused him to rethink environmentalism. His neighbor, a logger, appreciated the forests around them and knew a lot more about the forest than most of Schoenbrod's colleagues. "In the elite environmental circles I came from, it was never assumed that loggers could look at a forest and see anything but a commodity," writes Schoenbrod.

I also appreciated his description of the mess that the EPA-imposed cleanup of PCBs will make in the Hudson River. On a more intellectual level, Schoenbrod discusses the gradual shift of power from local communities to the federal government during the Progressive Era. This was spurred by the emerging "national class" of sophisticated Ivy League-educated experts.

Why does a person like Schoenbrod change his views? There may be many reasons, but perhaps the most important one here is that Schoenbrod was never captured by the environmental movement, meaning that he was unwilling to put the success of the movement before the facts. Indeed, he joined NRDC because of *humanitarian* concerns. He was a community-development worker in the poverty-ridden Bedford-Stuyvesant area of Brooklyn and saw environmental cleanup as a way of improving the surroundings. When Schoenbrod became convinced that lead from gasoline was pushing up lead levels in the blood of poor children in New York City, he tried to get the lead out of gasoline. The difficulty of the task (it was not actually accomplished until the mid-1980s) led him to rethink environmental advocacy as a profession for himself and, more profoundly, to reconsider the role of the Congress and the EPA. That he did as a law professor beginning in 1979.

Schoenbrod has put together his thoughts and his background in a readable although uneven book. We can learn a lot from him on the demerits of our current environmental regulation policies.

Jane Shaw (shaw@perc.org) is a senior fellow of PERC, the Property and Environment Research Center in Bozeman, Montana.



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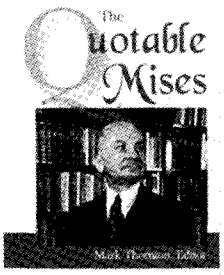
The Quotable Mises

Edited by Mark Thornton

Ludwig von Mises Institute • 2005 • 333 pages • $20.00

Reviewed by William H. Peterson



"Everyone carries a part of society on his shoulders; no one is relieved of his share of responsibility by others. And no one can find a safe way for himself if society is sweeping towards destruction. Therefore everyone, in his own interests, must thrust himself vigorously into the intellectual battle. None can stand aside with unconcern: the interests of everyone hang on the result. Whether he chooses or not, every man is drawn into the great historical struggle, the decisive battle in which the epoch has plunged us."

I chose this Mises quotation for its persuasive prescience of Orwellian things to come and for its individualistic appeal. It bears on this remarkable book of quotations from the vast work of Ludwig von Mises (1881–1973), even though the quotation itself is not included in this particular collection. (It is from the concluding chapter in his classic *Socialism*, published in 1922.) But as editor Mark Thornton says in his introduction, he and his teammates, including Thomas DiLorenzo, Martin Garfinkel, C.J. Maloney, B.K. Marcus, Richard Perry, and Jeffrey Tucker, were themselves unable to include all of their own favorites. Picking the best quotations of Mises is a lot like picking the best lines from Shakespeare.

Bettina Bien Greaves, a world authority on the life of Mises and someone well known to readers of *The Freeman*, calls the book "A thrilling project, a thorough job, and a marvelous result. *The Quotable Mises* performs a great service." I agree wholeheartedly and hope the book will reinvigorate interest in the thought of this great defender of individual liberty. More people will want to tackle *Human Action*, *Socialism*, and other imposing works once they have seen some of the magnificent quotations.

In *The Quotable Mises*, some 1,400 quotations and their citations are put into about 150 categories ranging from "Action" to "Youth." This organization makes it easy for anyone who wants a good quotation on a subject to quickly find one. That will be useful to people whether they're writing a paper or trying to clinch an argument.

A small sampling:

Some gems from "Ideas" include: "Only ideas can overcome ideas." "In a battle between force and an idea, the latter always prevails." "Great conflicts of ideas must be solved by straight and frank methods; they cannot be solved by artifices and makeshifts." "We must fight all that we dislike in public life. We must substitute better ideas for wrong ideas. We must refute the doctrines that promote union violence."

Under "Reason" we find: "Life and reality are neither logical nor illogical; they are simply givens." "Man has only one tool to fight error: reason. Man uses reason in order to choose between the incompatible satisfactions of conflicting desires." "The proof of a theory is in its reasoning, not in its sponsorship." "Reason is the main resource of man in his struggle for survival."

Some pithy quotes from the heading of "State" include: "The whole of mankind's progress has had to be achieved against the resistance and opposition of the state and its power of coercion." "It is characteristic of current political thinking to welcome every suggestion which aims at enlarging the influence of government." "*Après nous le déluge* [After us, the deluge] is an old maxim of government."

Under "War and Peace" I cannot resist this: "What basis for war could there still be, once all peoples had been set free?"

So it goes—a quote-by-quote panorama of a beautiful mind in action. Mises always endeavored to find ways of achieving and maintaining freedom against the formidable odds of coercive government, armed by majoritarianism and running a vast welfare-warfare state. Mises saw that it is the individual in a free society who represents the ultimate in self-government: a one-person government of the self, free to do whatever he wills provided he does not violate the equal freedom of others. The world will be a far, far better place if it ever adopts the wisdom of this profound thinker.

To borrow the apt closing word from Mr. Thornton's introduction: "Enjoy."

William Peterson (WHPeterson@aol.com), who earned his doctorate under Ludwig von Mises in 1952, is the winner of the 2005 Schlarbaum Prize for Lifetime Achievement in the Study of Liberty given by the Ludwig von Mises Institute.

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Capital Letters

What Did FDR Know?

Did President Roosevelt know in advance that the Japanese were planning to attack the U.S. fleet at Pearl Harbor on December 7, 1941? Or did Japan's "unprovoked and dastardly" attack on a peaceful United States take FDR completely by surprise? Speculation on those questions has now been rife for generations.

Robert Higgs ("How U.S. Economic Warfare Provoked Japan's Attack on Pearl Harbor," May 2006) goes a long way toward providing answers. There is no doubt that President Roosevelt was anxious to help England in her struggle against Hitler and Nazism, and the United States was assisting the British in many ways. At the same time, FDR was assuring the American public that he would *not* send U.S. boys to fight overseas "except in case of attack."

U.S. cryptographers had broken the Japanese diplomatic code and thus were privy to many, but by no means all, of Japan's secrets. It was apparent that the Japanese were planning some aggressive action, but precisely when or where wasn't evident.

When Higgs says Washington *knew* that Japan's efforts to secure raw materials from the South Seas would involve Pearl Harbor specifically, he goes too far. In making this charge, he relies on Robert Stinnett's *Day of Deceit: The Truth about FDR and Pearl Harbor*, which is based on many documents, obtained under the Freedom of Information Act, that he claimed were intercepted pre-attack and that specifically named Hawaii and Pearl Harbor as intended Japanese targets. Yet such knowledge was not evident by the actions of Roosevelt and others in his administration. Moreover, the Pearl Harbor commanders were never advised, allowing the attack to proceed without resistance and making it all the more devastating. Stinnett considered Washington's strategy in provoking the attack well justified because of the Nazi threat.

Whether or not FDR was surprised by the Japanese attack on Pearl Harbor is one question. But perhaps a more important question concerns the ethics of his strategy. Was he a "world savior" for having enlisted the United States in the crusade against Nazism? Or was he a "traitor" for having provoked an attack on the country by a foreign nation?

—BETTINA BIEN GREAVES
bbgreaves@aol.com

Robert Higgs replies:

No short reply can do justice to the comment by my friend Bettina Greaves, but perhaps I can clarify some points.

First, in my article I aimed to show how the U.S. government took a series of actions to put Japan's economy in a stranglehold, knowing full well that the Japanese might respond to these actions militarily.

Second, I did not seek to resolve the hoary question of exactly what Franklin D. Roosevelt knew and exactly when he knew it. I relied on Robert Stinnett's *Day of Deceit* because it contains a large body of new evidence bearing on this point and related ones. I highly recommend that readers absorb that evidence and reach their own conclusions.

Even if Roosevelt himself did not know for certain on December 6 or earlier that a Japanese attack force was heading for Hawaii, his top military commanders in Washington had solid reasons, based on intercepted Japanese radio messages, to expect an attack there. Perhaps they withheld that information from the President, but I doubt very much that they did so. Still, to my knowledge, no smoking gun directly implicates Roosevelt in certain knowledge that the Japanese would attack Pearl Harbor on December 7.

We should not allow this particular ambiguity in our historical facts to divert us, however, from an appreciation of the bigger picture. The Roosevelt administration took a series of deliberately provocative actions against Japan, knowing that the Japanese might attack in response and knowing the possible targets of such an attack, including Hawaii. That the eventual attack did include Pearl Harbor, along with many other places in the Pacific and southeast Asia, could not have come as a complete surprise to FDR and his top commanders.

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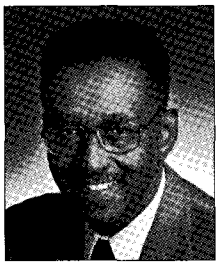

Economics for the Citizen: Part V

BY WALTER E. WILLIAMS

We're all grossly ignorant about most things that we use and encounter in our daily lives, but each of us is knowledgeable about tiny, relatively inconsequential things. For example, a baker might be the best baker in town, but he's grossly ignorant about virtually all the inputs that allow him to be the best baker. What is he likely to know about what goes into the processing of the natural gas that fuels his oven? For that matter, what does he know about the metallurgy involved in oven manufacture? Then there are all the ingredients he uses—flour, sugar, yeast, vanilla, and milk. Is he likely to know how to grow wheat and sugar and how to protect the crop from diseases and pests? What is he likely to know about vanilla extraction and yeast production? Just as important is the question how do all the people who produce and deliver all these items know what he needs and when he needs them? There are literally millions of people cooperating anonymously with one another to ensure that the baker has all the necessary inputs.

It's the miracle of the market and prices that gets the job done so efficiently. What's called the market is simply a collection of millions upon millions of independent decision-makers not only in America but around the world. Who or what coordinates the activities all of these people? Rest assured it's not a bakery czar.

There are a number of ways to allocate goods and services—deciding the who, what, how, and when of production and consumption. They include: first-come-first-served, gifts, violence, dictatorship, or lotteries. When it's the price mechanism that performs the allocation function, we realize efficiency gains absent in other methods. The price mechanism serves as a signaling function. Prices rise and fall, reflecting scarcities and surpluses. When prices rise as a result of higher demand, this acts as a signal to suppliers to expand output. They do so because whenever the price exceeds the costs of production, they stand to gain. They ship the goods to those with the highest willingness to pay.

Let's look at just one of the baker's needs—flour. How does the wheat farmer know whether there's a surge in demand for bakery products? The short answer is that he doesn't. All he knows is that millers are willing to pay higher wheat prices, so he's willing to put more land under cultivation or reduce his wheat inventory. In other words, prices serve the crucial role of conveying information. Moreover, prices minimize the amount of information that any particular agent involved in the process of getting flour to the baker needs in order to cooperate.

What if politicians thought that flour prices were too high and enacted flour price controls in the wake of a surge in demand for bakery products? Would wheat farmers put more land under cultivation? Would millers work overtime to produce more flour? The answer is a big fat no because what would be in it for them? The result would be flour shortages, but the story doesn't stop there because mankind is ingenious about getting around government interference. If there were flour price controls, we'd see black markets emerging—people buying and selling flour at illegal prices. That's always one effect of price controls. Another would be the corruption of public officials who know about the illegal activity but for a price look the other way.

In 302 the Roman emperor Diocletian decreed "there should be cheapness," declaring, "Unprincipled greed appears wherever our armies . . . march . . . . Our law shall fix a measure and a limit to this greed." The predictable result of Diocletian's food price controls were black markets, hunger, and food confiscation by his soldiers. Despite the disastrous history of price controls, politicians never manage to resist tampering with prices—that's not a flattering observation of their learning abilities.

Walter Williams is the John M. Olin Distinguished Professor of Economics at George Mason University.

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Little Economic Sense

In five short articles there's no way to even scratch the surface of economic knowledge. I'll simply end the series highlighting a few popular sentiments that have high emotional worth but make little economic sense. I use some of these sentiments as a teaching tool in my undergraduate classes.

Here's one that has considerable popular appeal: "It's wrong to profit from the misfortune of others." I ask my students whether they'd support a law against doing so. But I caution them with some examples. An orthopedist profits from your misfortune of having broken your leg skiing. When there's news of a pending ice storm, I doubt whether it saddens the hearts of those in the collision-repair business. I also tell my students that I profit from their misfortune—their ignorance of economic theory.

Then there's the claim that this or that price is unreasonable. I used to have conversations about this claim with Mrs. Williams early on in our 46-year marriage. She'd return from shopping complaining that stores were charging unreasonable prices. She'd then ask me unload a car trunk full of groceries and other items. Having completed the chore, I'd resume our conversation, saying, "Honey, I thought you said the prices were unreasonable. Are you an unreasonable person? Only an unreasonable person would pay unreasonable prices."

The long and short of it is that the conversation never went over well, and we both ceased discussions of reasonable or unreasonable prices. The point is that at whatever price a transaction is made, it represents a meeting of the minds of both buyer and seller. Both viewed themselves as being better off than with the next alternative—not making the transaction. That's not to say that the seller wouldn't have found a higher price more pleasing or the buyer wouldn't have wanted a lower price.

Parents' Admonition

How about your parents' admonition that "Whatever's worth doing is worth doing as well as possible"? Taken at face value, that's not a wise admonition. I tell my students, often to their surprise, that it might not be worth it to try to get the best grade possible in economics. Let's look at it. Say they have biology, physics, English, and economics classes. They work their butts off in economics, earning an A, but spending so much time studying economics takes time away from other classes, and they wind up earning an F in biology, a C in physics, and a D in English. That makes for a semester grade-point average of 1.75. They'd be better off, in terms of grade-point average, if they spent less time studying economics, maybe earning a C, and allocating more time to biology and English, thereby earning a C grade in all their subjects. They'd have a higher grade-point average (2.0) and wouldn't be on academic probation.

Then there's "You can never be too safe." Yes, you can. How many of us bother to inspect the hydraulic brake lines in our cars before we start the engine and head off to work? Doing so would be safer than simply taking for granted that the lines were intact and driving off. After all, prior to launching a space vehicle, the people at NASA make no similar mechanical assumptions. They go through extensive multiple checks of all systems, taking nothing for granted. Erring on the side of overcaution is costly, and so is erring on the side of undercaution, though for a given choice, one might be costlier than the other.

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"The greatest tyranny has the smallest beginnings. From precedents overlooked, from remonstrances despised, from grievances treated with ridicule, from powerless men oppressed with impunity and overbearing men tolerated with complacence, springs the tyrannical usage which generations of wise and good men may hereafter perceive and lament and resist in vain."

— An 1846 editorial, *The London Times*

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